

The Gazette of India

EXTRAORDINARY

PART II—Section 2

PUBLISHED BY AUTHORITY

No. 22]

NEW DELHI, FRIDAY, JUNE 22, 1962/ASADHA 1, 1884

LOK SABHA

The following Bills were introduced in Lok Sabha on the 22nd June, 1962:—

*BILL No. 61 of 1962

A Bill to consolidate and amend the law relating to the office and duties of Administrator-General.

BE it enacted by Parliament in the Thirteenth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

5 1. (1) This Act may be called the Administrators-General Act, Short title
extent and
commence-
ment.
1962.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Govern-
10 ment may, by notification in the Official Gazette, appoint.

2. In this Act, unless the context otherwise requires,—

Definitions.

(a) "assets" means all ~~the~~ ^{his} property, movable and immov-
able, of a deceased person, which is chargeable with and appli-
cable to the payment of his debts and legacies, or available for
15 distribution among his heirs and next-of-kin;

*The President has, in pursuance of clauses (1) and (3) of article 117 of the Constitu-
tion of India recommended to Lok Sabha the introduction and consideration of the
Bill.

(b) "letters of administration" includes any letters of administration whether general or with a copy of the will annexed or limited in time or otherwise;

(c) "next-of-kin" includes a widower or widow of a deceased person, or any other person who by law would be entitled to letters of administration in preference to a creditor or legatee of the deceased; and 5

(d) "prescribed" means prescribed by rules made under this Act.

CHAPTER II

10

THE OFFICE OF THE ADMINISTRATOR-GENERAL.

Appoint-
ment of
Administra-
tor-General.

3. (1) The State Government shall appoint an Administrator-General for the State:

Provided that nothing herein contained shall be deemed to bar the appointment of the same person as Administrator-General for two or more States. 15

(2) No person shall be appointed to the office of Administrator-General unless he has been for at least—

- (a) seven years an advocate; or
- (b) seven years an attorney of a High Court; or 20
- (c) ten years a member of the judicial service of a State; or
- (d) five years a Deputy Administrator-General.

Appoint-
ment and
powers of
Deputy
Administra-
tor-General.

4. (1) The State Government may appoint a Deputy or Deputies to assist the Administrator-General; and any Deputy so appointed shall, subject to the control of the State Government and the general or special orders of the Administrator-General, be competent to discharge any of the duties and to exercise any of the powers of the Administrator-General, and when discharging such duties or exercising such powers shall have the same privileges and be subject to the same liabilities as the Administrator-General. 25
30

(2) No person shall be appointed as a Deputy under this section unless he has been for at least three years—

- (a) an advocate; or
- (b) an attorney of a High Court; or
- (c) a member of the judicial service of a State. 35

5. The Administrator-General shall be a corporation sole by the name of the Administrator-General of the State for which he is appointed, and, as such Administrator-General, shall have perpetual succession and an official seal, and may sue and be sued in his corporate name.

Incorporation.

CHAPTER III

RIGHTS, POWERS AND DUTIES OF THE ADMINISTRATOR-GENERAL

(a) *Grant of letters of administration and probate*

6. So far as regards the Administrator-General of any State, the High Court shall be deemed to be a Court of competent jurisdiction for the purpose of granting probate or letters of administration under any law for the time being in force, wheresoever within the State the estate to be administered is situate:

Jurisdiction of High Court for the whole State.

Provided that nothing in this section shall be construed as affecting the jurisdiction of any district court.

7. Any letters of administration granted by the High Court shall be granted to the Administrator-General of the State unless they are granted to the next-of-kin of the deceased.

Administrator-General entitled to letters of administration, unless granted to next-of-kin.

8. The Administrator-General of the State shall be deemed by all the courts in the State to have a right to letters of administration other than letters *pendente lite* in preference to that of—

Administrator-General entitled to letters of administration in preference to creditors, certain legatees or friends.

(a) a creditor; or

(b) a legatee, other than a universal legatee or a residuary legatee or the representative of a residuary legatee; or

(c) a friend of the deceased.

9. (1) If—

(a) any person has died leaving within any State assets exceeding rupees five thousand in value, and

Right of Administrator-General to apply for administration of estates.

(b) (whether the obtaining of probate of his will or letters of administration to his estate is or is not obligatory), no person to whom any court would have jurisdiction to commit administration of such assets has, within one month after his death, applied in such State for such probate, or letters of administration, and

(c) (in cases where the obtaining of such probate or letters of administration is not obligatory under the provisions of the Indian Succession Act, 1925), no person has taken other proceedings for the protection of the estate,

39 of 1925.

the Administrator-General of the State in which such assets are, may, subject to any rules made by the State Government, within a reasonable time after he has had notice of the death of such person, and of his having left such assets, take such proceedings as may be necessary to obtain from the High Court letters of administration of the estate of such person.

10

(2) The Administrator-General shall not take proceedings under this section unless he is satisfied, that there is apprehension of misappropriation, deterioration or waste of such assets if such proceedings are not taken by him or that such proceedings are otherwise necessary for the protection of the assets.

15

Power of Administrator-General to collect and hold assets where immediate action is required.

10. (1) Whenever any person has died leaving assets within any State exceeding rupees five thousand in value, and the High Court for that State is satisfied that there is imminent danger of misappropriation, deterioration or waste of such assets, requiring immediate action, the High Court may, upon the application of the Administrator-General or of any person interested in such assets or in the due administration thereof, forthwith direct the Administrator-General—

20

(a) to collect and take possession of such assets, and

(b) to hold, deposit, realise, sell or invest the same according to the directions of the High Court, and, in default of any such directions, according to the provisions of this Act so far as the same are applicable to such assets.

25

(2) Any order of the High Court under sub-section (1) shall entitle the Administrator-General—

(a) to maintain any suit or proceeding for the recovery of such assets;

(b) if he thinks fit, to apply for letters of administration of the estate of such deceased person;

(c) to retain out of the assets of the estate any fees chargeable under rules made under this Act; and

35

(d) to reimburse himself for all payments made by him in respect of such assets which a private administrator might lawfully have made.

11. If, in the course of proceedings to obtain letters of administration under the provisions of section 9 or section 10,—

(a) any person appears and establishes his claim—

(i) to probate of the will of the deceased; or

5 (ii) to letters of administration as next-of-kin of the deceased, and gives such security as may be required of him by law; or

10 (b) any person satisfies the Court that he has taken and is prosecuting with due diligence other proceedings for the protection of the estate, the case being one in which the obtaining of such probate or letters of administration is not obligatory under the provisions of the Indian Succession Act, 1925; or

39 of 1925.

15 (c) the Court is satisfied that there is no apprehension of misappropriation, deterioration, or waste of the assets and that the grant of letters of administration in such proceedings is not otherwise necessary for the protection of the assets;

the Court shall—

(1) in the case mentioned in clause (a), grant probate of the will or letters of administration accordingly,

20 (2) in the case mentioned in clause (b) or clause (c), drop the proceedings; and

25 (3) in all the cases award to the Administrator-General the costs of any proceedings taken by him under those sections to be paid out of the estate as part of the testamentary or intestate expenses thereof.

12. If, in the course of proceedings to obtain letters of administration under the provisions of section 9 or section 10, and within such period as to the Court seems reasonable, no person appears and establishes his claim to probate of a will, or to a grant of letters of
30 administration as next-of-kin of the deceased, or satisfies the Court that he has taken and is prosecuting with due diligence other proceedings for the protection of the estate, the case being one in which the obtaining of such probate or letters of administration is not obligatory under the provisions of the Indian Succession Act, 1925, and
35 the Court is satisfied that there is apprehension of misappropriation, deterioration, or waste of the assets or that the grant of letters of administration in such proceedings is otherwise necessary for the protection of the assets;

39 of 1925.

or if a person who has established his claim to a grant of letters
40 of administration as next-of-kin of the deceased fails to give such security as may be required of him by law,

Grant of probate or letters of administration to person appearing in the course of proceedings taken by Administrator-General.

Grant of administration to Administrator-General in certain cases.

the Court may grant letters of administration to the Administrator-General.

13. Nothing in this Act shall be deemed to preclude the Administrator-General from applying to the Court for letters of administration in any case within the period of one month from the death of the deceased.

(b) *Revocation of grants*

14. If an executor or next-of-kin of the deceased, who has not been personally served with a citation or who has not had notice thereof in time to appear pursuant thereto, establishes to the satisfaction of the Court a claim to probate of will or to letters of administration in preference to the Administrator-General, any letters of administration granted in accordance with the provisions of this Act to the Administrator-General—

(a) shall be revoked, if a will of the deceased is proved in the State;

(b) may be revoked, in other cases, if an application for that purpose is made within six months after the grant to the Administrator-General and the Court is satisfied that there has been no unreasonable delay in making the application, or in transmitting the authority under which the application is made;

and probate or letters of administration may be granted to such executor or next-of-kin as the case may be.

15. If any letters of administration granted to the Administrator-General in accordance with the provisions of this Act are revoked, the Court may order the costs of obtaining such letters of administration, and the whole or any part of any fees which would otherwise have been payable under this Act, together with the costs of the Administrator-General in any proceedings taken to obtain such revocation, to be paid to or retained by the Administrator-General out of the estate.

Provided that nothing in this section shall affect the provisions of clauses (c) and (d) of sub-section (2) of section 10.

16. If any letters of administration granted to the Administrator-General in accordance with the provisions of this Act are revoked, the same shall, so far as regards the Administrator-General and all

persons acting under his authority in pursuance thereof, be deemed to have been only voidable, except as to any act done by any such Administrator-General or other person as aforesaid, after notice of a will or of any other fact which would render such letters void:

Administrator-General to be deemed, as to him, to have been voidable only.

5 Provided that no notice of a will or of any other fact which would render any such letters void shall affect the Administrator-General or any person acting under his authority in pursuance of such letters unless, within the period of one month from the time of giving such notice, proceedings are commenced to prove the will, or to cause the
10 letters to be revoked, and such proceedings are prosecuted without unreasonable delay.

17. If any letters of administration granted to the Administrator-General in accordance with the provisions of this Act are revoked, upon the grant of probate of a will, or upon the grant of letters of
15 administration with a copy of the will annexed, all payments made or acts done by or under the authority of the Administrator-General in pursuance of such letters of Administration, prior to the revocation, which would have been valid under any letters of administration lawfully granted to him with a copy of such will annexed,
20 shall be deemed valid notwithstanding such revocation.

Payments made by Administrator-General prior to revocation.

(c) General

18. Whenever any Administrator-General applies for letters of administration in accordance with the provisions of this Act, it shall be sufficient if the petition required to be presented for the grant
25 of such letters states,—

Administrator-General's petition for grant of letters of administration.

(i) the time and place of the death of the deceased to the best of the knowledge and belief of the petitioner;

(ii) the names and addresses of the surviving next-of-kin of the deceased, if known;

30 (iii) the particulars and value of the assets likely to come into the hands of the petitioner;

(iv) particulars of the liabilities of the estate, if known.

19. All probates or letters of administration granted to any Administrator-General shall be granted to him by that name.

Name in which probate or letters to be granted.

35 20. (1) Probate or letters of administration granted by the High Court to the Administrator-General of any State shall have effect over all the assets of the deceased throughout the territories to which this Act extends and shall be conclusive as to the representative title against all debtors of the deceased and all persons holding such assets, and shall afford full indemnity to all debtors paying

Effect of probate or letters granted to Administrator-General.

their debts and all persons delivering up such assets to such Administrator-General.

(2) Whenever a grant of probate or letters of administration is made by a High Court to the Administrator-General, the High Court shall send to the High Courts for the other States a certificate that such grant has been made, and such certificate shall be filed by the Court receiving the same. 5

Effect of grant by the High Court of Jammu and Kashmir.

21. Probate or letters of administration granted by the High Court for the State of Jammu and Kashmir to the Administrator-General of that State shall have effect over all the assets of the deceased throughout all the States to the High Courts of which a certificate is sent by the High Court for the State of Jammu and Kashmir that such grant has been made, and shall be conclusive as to the representative title against all debtors of the deceased and all persons holding such assets, and shall afford full indemnity to all debtors paying their debts and all persons delivering up such assets to such Administrator-General. 15

Transfer by private executor or administrator of interest under probate or letters.

22. (1) Any private executor or administrator may, with the previous consent of the Administrator-General of the State in which any of the assets of the estate, in respect of which such executor or administrator has obtained probate or letters of administration, are situate, by an instrument in writing under his hand notified in the Official Gazette, transfer the assets of the estate, vested in him by virtue of such probate or letters to the Administrator-General by that name or any other sufficient description. 20 25

(2) As from the date of such transfer, the transferor shall be exempt from all liability as such executor or administrator, as the case may be, except in respect of acts done before the date of such transfer, and the Administrator-General shall have the rights which he would have had, and be subject to the liabilities to which he would have been subject, if the probate or letters of administration, as the case may be, had been granted to him by that name at the date of such transfer. 30

Distribution of assets.

23. (1) When the Administrator-General has given the prescribed notice to creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets or any part thereof in discharge of such lawful claims as he has notice of. 35

(2) The Administrator-General shall not be liable for the assets so distributed to any person of whose claims he had not notice at the time of such distribution.

(3) No notice of any claim which has been sent in and has been rejected or disallowed in part by the Administrator-General shall affect him, unless proceedings to enforce such claim are commenced within one month after notice of the rejection or disallowance of such claim has been given in the prescribed manner and unless such proceedings are prosecuted without unreasonable delay.

(4) Nothing in this section shall prejudice the right of any creditor or other claimant to follow the assets or any part thereof in the hands of the persons who may have received the same respectively.

(5) In computing the period of limitation for any suit, appeal or application under the provisions of any law for the time being in force, the period between the date of submission of the claim of a creditor or other claimant to the Administrator-General and the date of the final decision of the Administrator-General on such claim shall be excluded.

24. (1) When the Administrator-General has, so far as may be, discharged all the liabilities of an estate administered by him, he shall notify the fact in the Official Gazette, and he may, by an instrument in writing, with the consent of the Official Trustee and subject to any rules made by the State Government, appoint the Official Trustee to be the trustee of any assets then remaining in his hands.

Appointment of Official Trustee as trustee of assets after completion of administration.

(2) Upon such appointment, such assets shall vest in the Official Trustee as if he had been appointed trustee in accordance with the provisions of the Official Trustees Act, 1913, and shall be held by him upon the same trusts as the same were held immediately before such appointment.

25. The High Court may, on application made to it by the Administrator-General or any person interested in the assets or in the due administration thereof, give to the Administrator-General of the State any general or special directions as to any estate in his charge or in regard to the administration of any such estate.

Power of High Court to give directions regarding administration of estate

26. No Administrator-General shall be required by any Court to enter into any administration bond, or to give other security to the Court, on the grant of any letters of administration to him by that name.

No security to be required from Administrator-General

Manner in which petition to be verified by Administrator-General.

27. No Administrator-General shall be required to verify, otherwise than by his signature, any petition presented by him under the provisions of this Act, and, if the facts stated in any such petition are not within his own personal knowledge, the petition may be subscribed and verified by any person competent to make verification. 5

Entry of Administrator-General not to constitute notice of a trust.

28. The entry of the Administrator-General by that name in the books of a company shall not constitute notice of a trust, and a company shall not be entitled to object to entering the name of the Administrator-General on its register by reason only that the Administrator-General is a corporation, and in dealing with assets the fact that the person dealt with is the Administrator-General shall not of itself constitute notice of a trust. 10

CHAPTER IV

GRANT OF CERTIFICATE

15

In what cases Administrator-General may grant certificate.

29. (1) Whenever any person has died leaving assets within any State and the Administrator-General of such State is satisfied that such assets, excluding any sum of money deposited in a Government Savings Bank or in any provident fund to which the provisions of the Provident Funds Act, 1925, apply, did not at the date of death exceed in the whole five thousand rupees in value, he may grant to any person, claiming otherwise than as a creditor to be interested in such assets or in the due administration thereof, a certificate under his hand entitling the claimant to receive the assets therein mentioned left by the deceased within the State, to a value not exceeding in the whole five thousand rupees. 20 1 of 1925 25

(2) No certificate under this section shall be granted before the lapse of one month from the death unless before the lapse of the said one month the Administrator-General is requested so to do by writing under the hand of the executor or the widow or other person entitled to administer the estate of the deceased and he thinks fit to grant it. 30

(3) No certificate shall be granted under this section,—

(i) where probate of the deceased's will or letters of administration of his estate has or have been granted; or 35

(ii) in respect of any sum of money deposited in a Government Savings Bank or in any provident fund to which the provisions of the Provident Funds Act, 1925, apply.

19 of 1925.

30. (1) If, in cases falling within section 29, no person claiming to be interested otherwise than as a creditor in such assets or in the due administration thereof obtains, within three months of the death of the deceased, a certificate from the Administrator-General under that section, or probate of a will or letters of administration of the estate of the deceased, the Administrator-General may administer the estate without letters of administration, in the same manner as if such letters had been granted to him.

Grant of certificate to creditors and power to take charge of certain estates.

(2) If the Administrator-General neglects or refuses to administer such estate, he shall, upon the application of a creditor, grant a certificate to him in the same manner as if he were interested in such assets otherwise than as a creditor; and such certificate shall have the same effect as a certificate granted under the provisions of section 29, and shall be subject to all the provisions of this Act which are applicable to such certificate.

(3) The Administrator-General may, if he thinks fit, before granting a certificate under sub-section (2), require the creditor to give reasonable security for the due administration of the estate of the deceased.

31. The Administrator-General shall not be bound to grant any certificate under section 29 or section 30 unless he is satisfied after making such inquiry as he thinks fit of the title of the claimant and of the value of the assets left by the deceased within the State.

Administrator-General not bound to grant certificate unless satisfied of claimant's title, etc.

32. The holder of a certificate granted in accordance with the provisions of section 29 or section 30 shall have in respect of the assets specified in such certificate the same powers and duties, and be subject to the same liabilities as he would have had or been subject to if letters of administration had been granted to him:

Effect of certificate.

Provided that nothing in this section shall be deemed to require any person holding such certificate,—

(a) to file accounts or inventories of the assets of the deceased before any court or other authority; or

(b) save as provided in section 30, to give any bond for the due administration of the estate.

33. (1) The Administrator-General may revoke a certificate granted under the provisions of section 29 or section 30 on any of the following grounds, namely:—

Revocation of certificate.

(i) that the certificate was obtained by fraud or misrepresentation made to him;

(ii) that the certificate was obtained by means of an untrue allegation of a fact essential in law to justify the grant though such allegation was made in ignorance or inadvertently.

(2) No certificate shall be revoked under this section unless the holder of the certificate has been given a reasonable opportunity of showing cause why the certificate should not be so revoked. 5

Surrender
of revoked
certificate.

34. (1) When a certificate is revoked in accordance with the provisions of section 33, the holder thereof shall, on the requisition of the Administrator-General, deliver it up to such Administrator-General, but shall not be entitled to the refund of any fee paid thereon. 10

(2) If such person wilfully and without reasonable cause omits to deliver up the certificate, he shall be punishable with imprisonment which may extend to three months, or with fine which may extend to one thousand rupees, or with both. 15

Payment to
holder of
certificate
before it
is revoked.

35. When a certificate is revoked in accordance with the provisions of section 33, all payments made in good faith under such certificate to the holder thereof before such revocation, shall, notwithstanding such revocation, be a legal discharge to the person making the payment and the holder of such certificate may retain, and reimburse himself in respect of, any payments made by him which the person to whom a certificate or probate or letters of administration may afterwards be granted might lawfully have made. 20

Administrator-General
not bound
to take out
administration
on account of
assets for
which he
has granted
certificate.

36. The Administrator-General shall not be bound to take out letters of administration of the estate of any deceased person on account of the assets in respect of which he grants any certificate under section 29 or section 30, but he may do so if he revokes such certificate under section 33, or ascertains that the value of the estate exceeded five thousand rupees. 25

Transfer of
certain
assets to
executor or
administrator
in country of
domicile for
distribution.

37. Where— 30

(a) a person not having his domicile in any State to which this Act extends has died leaving assets in any State and in the country in which he had his domicile at the time of his death, and

(b) proceedings for the administration of his estate with respect to assets in any such State have been taken under section 29 or section 30, and 35

(c) there has been a grant of administration in the country of domicile with respect to the assets in that country, the holder of the certificate granted under section 29 or section 30, or the Administrator-General, as the case may be, after having
 5 given the prescribed notice for creditors and others to send in to him their claims against the estate of the deceased, and after having discharged, at the expiration of the time therein named, such lawful claims as he has notice of, may, instead of himself distributing
 10 any surplus or residue of the deceased's property to persons residing out of India or in the State of Jammu and Kashmir who are entitled thereto, transfer, with the consent of the executor or administrator, as the case may be, in the country of domicile, the surplus or residue to him for distribution to those persons.

CHAPTER V

15

LIABILITY

38. The Government shall be liable to make good all sums required to discharge any liability which the Administrator-General, if he were a private administrator, would be personally liable to discharge, except when the liability is one to which neither the Administrator-General nor any of his officers has in any way contributed, or which neither he nor any of his officers could, by the exercise of reasonable diligence, have averted, and in either of those cases the Administrator-General shall not, nor shall the Government, be subject to any liability.

Liability of Government.

25 39. (1) If any suit be brought by a creditor against any Administrator-General, such creditor shall be liable to pay the costs of the suit unless he proves that not less than one month previous to the institution of the suit he had applied in writing to the Administrator-General, stating the amount and other particulars of his
 30 claim, and had given such evidence in support thereof as, in the circumstances of the case, the Administrator-General was reasonably entitled to require.

Creditor's suit against Administrator-General

(2) If any such suit is decreed in favour of the creditor, he shall, nevertheless, unless he is a secured creditor, be only entitled to
 35 payment of the amount decreed or ordered by the court to be paid out of the assets of the deceased equally and rateably with the other creditors.

5 of 1908.

40 40. Nothing in section 80 of the Code of Civil Procedure, 1908, shall apply to any suit against the Administrator-General in which no relief is claimed against him personally.

Notice of suit not required in certain cases.

CHAPTER VI

FEES

Fees.

41. (1) There shall be charged in respect of the duties of the Administrator-General such fees, whether by way of percentage or otherwise, as may be prescribed by the State Government. 5

(2) The fees under this section may be at different rates for different estates or classes of estates or for different duties, and shall, so far as may be, be arranged so as to produce an amount sufficient to discharge the salaries and all other expenses incidental to the working of this Act, (including such sum as the State Government may determine to be required to insure the Government against loss under this Act). 10

Disposal of fees.

42. (1) Any expenses which might be retained or paid out of any estate in the charge of the Administrator-General, if he were a private Administrator of such estate shall be so retained or paid 15 and the fees described under section 41 shall be retained or paid in like manner as and in addition to such expenses.

(2) The Administrator-General shall transfer and pay to such authority in such manner and at such time as the State Government may prescribe, all fees received by him under this Act, and 20 the same shall be carried to the account and the credit of the Government.

CHAPTER VII

AUDIT OF THE ADMINISTRATOR-GENERAL'S ACCOUNTS

Audit.

43. The accounts of every Administrator-General shall be audited 25 at least once annually and at any other time if the State Government so directs, by the prescribed person and in the prescribed manner.

Auditors to examine accounts and report to Government.

44. The auditors shall examine the accounts and forward to the State Government a statement thereof in the prescribed form, 30 together with a report thereon and a certificate signed by them showing—

(a) whether the accounts have been audited in the prescribed manner;

(b) whether, so far as can be ascertained by such audit, the 35 accounts contain a full and true account of everything which ought to be inserted therein;

(c) whether the books which by any rules made under this Act are directed to be kept by the Administrator-General, have been duly and regularly kept; and

(d) whether the assets and securities have been duly kept and invested and deposited in the manner prescribed by this Act, or by any rules made thereunder;

or (as the case may be) that such accounts are deficient, or that the Administrator-General has failed to comply with this Act or the rules made thereunder, in such respects as may be specified in such certificate.

3 of 1908. 45. (1) Every auditor shall have all the powers vested in a civil court under the Code of Civil Procedure, 1908, when trying a suit, in respect of the following matters, namely:—

15 (a) summoning and enforcing the attendance of witnesses and examining them on oath;

(b) discovery and inspection;

(c) compelling the production of documents; and

(d) issuing commissions for the examination of witnesses.

20 (2) Any person who when summoned refuses, or, without reasonable cause, neglects to attend or to produce any document or thing or attends and refuses to be sworn, or to be examined, shall be deemed to have committed an offence within the meaning of, and punishable under, section 188 of the Indian Penal Code, and the auditor shall report every case of such refusal or neglect to the State Government.

45 of 1860.

25 46. The costs of and incidental to such audit and examination shall be determined in accordance with rules made by the State Government, and shall be defrayed in the prescribed manner.

CHAPTER VIII

30

MISCELLANEOUS

47. The Administrator-General may, in addition to, and not in derogation of, any other powers of expenditure lawfully exercisable by him, incur expenditure—

35 (a) on such acts as may be necessary for the proper care and management of any property belonging to any estate in his charge; and

(b) with the sanction of the High Court, on such religious, charitable and other objects, and on such improvements, as may be reasonable and proper in the case of such property.

Power of auditors to summon and examine witnesses, and to call for documents.

Costs of audit, etc.

General powers of administration.

Power to
summon
and examine
witnesses.

48. (1) The Administrator-General may, whenever he desires, for the purposes of this Act, to satisfy himself regarding any question of fact, exercise all the powers vested in a civil court under the Code of Civil Procedure, 1908, when trying a suit, in respect of the following matters, namely:—

5 of 1908.

5

(a) summoning and enforcing the attendance of witnesses and examining them on oath;

(b) discovery and inspection;

(c) compelling the production of documents; and

(d) issuing commissions for the examination of witnesses. 10

(2) The provisions of sub-section (2) of section 45 shall apply in relation to a person summoned by the Administrator-General under this section as they apply in relation to a person summoned under that section.

Power of
person
beneficially
interested
to inspect
Administra-
tor-
General's
account,
etc., and
take copies.

49. Any person interested in the administration of any estate 15 which is in the charge of the Administrator-General shall, subject to such conditions and restrictions as may be prescribed, be entitled at all reasonable times to inspect the accounts relating to such estate and the reports and certificates of the auditor, and on payment of the prescribed fee, to copies thereof and extracts therefrom 20

False
evidence.

50. Whoever, during any examination authorised by this Act, makes upon oath a statement which is false and which he either knows or believes to be false or does not believe to be true, shall be deemed to have intentionally given false evidence in a stage of a judicial proceeding.

25

Assets un-
claimed for
twelve years
to be trans-
ferred to
Govern-
ment.

51. All assets in the charge of the Administrator-General which have been in his custody for a period of twelve years or upwards, whether before or after the commencement of this Act, without any application for payment thereof having been made and granted by him shall be transferred, in the prescribed manner, to the account 30 and credit of the Government:

Provided that this section shall not authorise the transfer of any such assets as aforesaid, if any suit or proceeding is pending in respect thereof in any court.

Mode of
proceeding
by claimant
to recover
principal
money so
transferred.

52. (1) If any claim is hereafter made to any part of the assets 35 transferred to the account and credit of the Government under the provisions of this Act, or any Act hereby repealed, and if such claim is established to the satisfaction of the prescribed authority, the State Government shall pay to the claimant the amount of the principal so transferred to its account and credit or so much thereof 40 as has been found by the said authority to be due to the claimant.

(2) If the claim is not established to the satisfaction of the prescribed authority, the claimant may, without prejudice to his right to take any other proceedings for the recovery of such assets, apply by petition to the High Court against the State Government and such Court, after taking such evidence as it thinks fit, shall make such order in regard to the payment of the whole or any part of the said principal sum as it thinks fit, and such order shall be binding on all parties to the proceedings.

(3) The Court may further direct by whom the whole or any part of the costs of each party shall be paid.

59 of 1925.
1 of 1956.

53. Nothing contained in the Indian Succession Act, 1925, or the Companies Act, 1956, shall be taken to supersede or affect the rights, duties and privileges of any Administrator-General.

Succession Act or Companies Act not to affect Administrator-General.

39 of 1925.

54. Nothing contained in the Indian Succession Act, 1925, or in this Act, shall be deemed to affect, or to have affected, any law for the time being in force relating to the movable property under four hundred rupees in value of persons dying intestate within any of the presidency-towns which shall be or has been taken charge of by the police for the purpose of safe custody.

Savings of provisions of Police Acts for presidency-towns.

55. Any order made under this Act by any court shall have the same effect as a decree.

Order of court to be equivalent to decree.

56. Notwithstanding anything in this Act, or in any other law for the time being in force, the Central Government may, by general or special order, direct that, where a subject of a foreign State dies in the territories to which this Act extends, and it appears that there is no one in the said territories, other than the Administrator-General, entitled to apply to a court of competent jurisdiction for letters of administration of the estate of the deceased, letters of administration shall, on the application to such court by any Consular Officer of such foreign State, be granted to such Consular Officer on such terms and conditions as the Court may, subject to any rules made in this behalf by the Central Government, think fit to impose.

Provision for administration by Consular Officer in case of death in certain circumstances of foreign subject.

40 of 1950.

62 of 1957.

57. It shall not be necessary for the Administrator-General to take out letters of administration of the estate of any deceased person which is being administered by him in accordance with the provisions of the Army and Air Force (Disposal of Private Property) Act, 1950, or the Navy Act, 1957, if the value of such estate does not, on the date when such administration is committed to him, exceed rupees two thousand, but he shall have the same power in regard to such estate

Letters of administration not necessary in respect of small estates administered by Administrator-General.

tor-General in accordance with certain Acts. as he would have had if letters of administration had been granted to him.

Powers to grant Administrator-General letters limited for purpose of dealing with assets in accordance with the Army and Air Force (Disposal of Private Property) Act, 1950, or the Navy Act, 1957. 58. If the Administrator-General applies in accordance with the provisions of the Army and Air Force (Disposal of Private Property) Act, 1950, or the Navy Act, 1957, for letters of administration of the estate of any person subject to the Army Act, 1950, or the Air Force Act, 1950, or the Navy Act, 1957, the Court may grant to him letters of administration limited to the purpose of dealing with such estate in accordance with the provisions of the Army and Air Force (Disposal of Private Property) Act, 1950, or, as the case may be, the Navy Act, 1957. 40 of 1950.
5 62 of 1957.
46 of 1950.
45 of 1950.

Act not to affect Army and Air Force (Disposal of Private Property) Act, 1950, or the Navy Act, 1957. 59. Nothing in this Act shall be deemed to affect the provisions of the Army and Air Force (Disposal of Private Property) Act, 1950, or the Navy Act, 1957. 40 of 1950.
62 of 1957.

Saving of provisions of Indian Registration Act, 1908. 60. Nothing in this Act shall be deemed to affect the provisions of the Indian Registration Act, 1908. 15
16 of 1908.

Power of Central Government to make rules. 61. The Central Government may, by notification in the Official Gazette, make rules as to the terms and conditions on which letters of administration may be granted to Consular Officers under section 56. 20

Power of State Government to make rules. 62. (1) The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act, and for regulating the proceedings of the Administrator-General.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for— 25

(a) the accounts to be kept by the Administrator-General and the audit and inspection thereof;

(b) the safe custody, deposit and investment of assets and securities which come into the hands of the Administrator-General;

(c) the remittance of sums of money in the hands of the Administrator-General in cases in which such remittances are required;

5 (d) subject to the provisions of this Act, the fees to be paid under this Act and the collection and accounting for any such fees;

(e) the statements, schedules and other documents to be submitted to the State Government or to any other authority by the Administrator-General, and the publication thereof;

10 (f) the realization of the cost of preparing any such statements, schedules or other documents;

(g) the manner in which and the person by whom the costs of and incidental to any audit under the provisions of this Act are to be determined and defrayed;

15 (h) the manner in which summonses issued under this Act are to be served and the payment of the expenses of any person summoned or examined under the provisions of this Act, and of any expenditure incidental to such examination; and

20 (i) any other matter which is required to be, or may be, prescribed under this Act.

63. Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days, which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that 30 any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Laying of rules made by Central Government before Parliament.

3 of 1913.

64. (1) The Administrator-General's Act, 1913, is hereby repealed. Repeal and savings.

10 of 1897.

(2) Without prejudice to the generality of the provisions of the General Clauses Act, 1897, relating to the effect of repeals, the repeal 35 effected by this section shall not affect the incorporation of any person holding the office of Administrator-General at the commencement of this Act.

3 of 1913.

(3) Notwithstanding anything contained in this section, the provisions of section 59B of the Administrator-General's Act, 1913, shall 40 continue to apply as if that Act had not been repealed.

STATEMENT OF OBJECTS AND REASONS

This Bill seeks to implement the recommendations of the Law Commission contained in its Nineteenth Report on the Administrator-General's Act, 1913. The Notes on Clauses explain the deviations made from the existing Act.

NEW DELHI;

ASOKE K. SEN.

The 15th June, 1962.

Notes on Clauses

Clause 2.—This is a reproduction of existing section 2 but for the omission of certain definitions. The definitions of “exempted person” and “Indian Christian” are being omitted as irrelevant in the scheme of the Bill; that of “High Court” as superfluous in view of the definition of the term in the General Clauses Act, 1897, and that of “Government” as unnecessary in view of the use of the expression “State Government” in the substantive sections.

Clauses 3 and 4.—These correspond to existing sections 3 and 4. Qualifications for Administrators-General have been revised and those for deputies have been prescribed, keeping in mind the changed conditions under which persons with the necessary qualifications are easily available. As a Deputy can under the Act discharge any of the duties of the Administrator-General, it is advisable to prescribe some qualifications for that office also in the Act itself.

Clause 5.—This reproduces existing section 5.

Clause 6.—This corresponds to existing section 6, except that it is now made clear that the concurrent jurisdiction of the district courts is not affected.

Clause 7.—This replaces existing section 7 with the omission of certain obsolete words.

Clause 8.—Under section 8 as it now stands, the Administrator-General cannot have any preference over a universal legatee in the matter of the grant of letters of administration. A residuary legatee and his representative should stand on the same footing as a universal legatee for this purpose. Clause 8 reproduces section 8 with the above modification.

Clauses 9 and 10.—These replace existing sections 9, 10 and 11 with fundamental changes. The benefits under sections 9, 10 and 11 are confined at present either to non-exempted persons (primarily Europeans) or properties situated in the presidency towns. It has been felt that as the object of the Act is essentially to protect the property of a deceased person from being misappropriated or wasted, the availability of the protection should not be made dependent on such considerations as whether the property is situated in one place or the

other or whether the person is an exempted person. The clauses have been drafted so as to enable the Administrator-General to intervene in all cases in which it is necessary. Such intervention is made optional, in view of the large number of cases which may arise. It is confined to cases where the assets exceed in value rupees 5,000 (assets of lesser value being covered by the simpler procedure in clause 29) and there is apprehension of misappropriation, etc. of the assets and intervention is necessary on account either of failure on the part of interested persons to take appropriate steps for the protection of the estate (clause 10) or the presence of imminent danger of misappropriation, etc. of the assets requiring immediate action. Care has, however, been taken to ensure that nothing in this clause would render it obligatory for any person to obtain probate or letters of administration in cases in which it is not at present obligatory to do so under the Indian Succession Act.

Clauses 11 and 12.—These reproduce existing sections 12 and 13 with changes rendered necessary by the new clauses 9 and 10.

Clause 13.—This reproduces existing section 14.

Clause 14.—This reproduces the substance of existing section 18 in simplified language and provides further that where a will of the deceased is proved in the State, the grant made to the Administrator-General shall be revoked.

Clauses 15 to 19.—These reproduce, in effect, existing sections 19 to 23.

Clause 20.—This corresponds to existing section 24. It is now provided that a grant by the High Court to the Administrator-General of a State shall have effect over all the assets of the deceased throughout India, without a certificate being required (as at present) to specify the States wherein the grant will be effective.

Clause 21.—This is new and is intended to make the grant of probate or letters of administration by the High Court of Jammu and Kashmir in favour of the Administrator-General of that State effective in all the other States of India. A corresponding provision will be made in the State law by the State Legislature of Jammu and Kashmir.

Clause 22.—This reproduces existing section 25.

Clause 23.—This reproduces existing section 26 with one change, namely that the rule of limitation embodied in sub-section (5) of the section is extended to cover claims by any person instead of confining it as at present to claims by creditors only.

Clause 24.—This reproduces existing section 27.

Clause 25.—This reproduces in substance existing section 28.

Clauses 26, 27 and 28.—These correspond to sub-sections (1), (2) and (3) of existing section 29.

Clause 29.—This corresponds to section 31, but the power of the Administrator-General to issue certificates in respect of small estates has been extended to cover estates upto five thousand rupees in value instead of upto rupees two thousand as at present.

Clause 30.—This reproduces existing section 32 with certain consequential changes.

Clause 31.—Existing section 33, which this clause replaces, is being modified so as to leave the Administrator-General sufficient discretion in the matter of granting or refusing certificates under clause 29.

Clause 32.—This reproduces existing section 34 with consequential changes.

Clause 33.—This reproduces existing section 35, but it is expressly provided that before revoking a certificate, the certificate holder should be given a reasonable opportunity of showing cause against the revocation.

Clause 34.—This reproduces existing section 36.

Clause 35.—This is new and is intended to indemnify payments made to the holder of a certificate before its revocation.

Clauses 36 and 37.—These reproduce existing sections 37 and 38 with some consequential changes.

Clause 38.—This corresponds to existing sub-section (1) of section 39. Sub-section (2) of that section is being omitted as no longer necessary and the words "revenues of" in sub-section (1) are being omitted in view of the constitutional provisions regarding consolidated fund.

Clause 39.—This reproduces existing section 40, with a small change on the lines of an amendment made in West Bengal to make the intention clear.

Clause 40.—This reproduces existing section 41.

Clause 41.—This reproduces existing section 42 except that the provisos to sub-section (1) of that section have been omitted as obsolete or unnecessary and the words "revenues of" in sub-section (2) are omitted for reasons similar to those stated against clause 38.

Clauses 42 and 43.—These reproduce existing sections 43 and 44.

Clause 44.—Existing section 45 which this clause replaces has been slightly amplified by the addition of sub-clause (a).

Clause 45.—This reproduces with minor drafting changes existing section 46.

Clauses 46 and 47.—These reproduce existing sections 47 and 48.

Clause 48.—This corresponds to existing section 30 which is being amplified so as to clothe the Administrator-General with some of the powers of a civil court to enable him to satisfy himself with regard to questions of fact.

Clauses 49, 50 and 51.—These reproduce existing sections 49, 51 and 52.

Clause 52.—This reproduces existing section 53 with a verbal change to make the intention clear.

Section 54 of the existing Act is being omitted for the reasons given in paragraph 51 of the Law Commission's Report.

Clause 53.—This reproduces sub-section (1) of existing section 55 with some consequential changes.

Clause 54.—This reproduces sub-section (2) of existing section 55 with a change to bring it into harmony with the Bombay Police Act, 1951 (Bombay Act 22 of 1951).

Clauses 55 and 56.—These reproduce existing sections 56 and 57.

Clauses 57, 58 and 59.—These replace existing sections 16, 17 and 15 with certain consequential changes, in addition to raising the monetary limit in section 16 from rupees one thousand to rupees two thousand.

Clause 60.—This reproduces existing section 59.

Clause 61.—This is new and is intended to provide separately for the rule making power of the Central Government under clause 56.

Clause 62.—This reproduces existing section 50.

Clause 64.—While repealing the existing Act, this clause provides for the continued operation of section 59B of the existing Act which contains special provisions regarding Administrators-General affected by the recent re-organisation of States.

FINANCIAL MEMORANDUM

Clause 3 provides for the appointment of an Administrator-General by the State Government which in respect of Union Territories would be the Central Government. The practice at present followed is for the Administrator-General of an adjoining State to be the Administrator-General of a Union Territory as permitted by the existing Act, a provision which is being repeated in the Bill. Even so, some expenditure may be involved from the Consolidated Fund of India on this account.

Clause 38 makes the Government liable to make good, subject to certain qualifications, all sums required to discharge any liability which the Administrator-General, if he were a private administrator, would be personally liable to discharge. Clause 42 provides for the carrying to the account and credit of the Government all fees received by the Administrator-General. The scheme of the existing Act [see also cl. 41 (2)] is that the fees leviable should be so arranged as to produce an amount sufficient to meet all expenditure in connection with the working of the Act (including such sum as may be required to insure the Government against loss under the Act).

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 61 empowers the Central Government to make rules as to the terms and conditions on which letters of administration may be granted to Consular officers of foreign States in respect of estates of subjects of foreign States. In the matter of imposition of terms and conditions, some discretion has necessarily to be vested in the executive.

Clause 62 empowers the State Government to make rules for carrying out the purposes of the Act and for regulating the proceedings of the Administrator-General. The matters in respect of which such rules may be made pertain to the fees to be paid under the Act, the accounts to be kept by the Administrator-General and the audit and inspection of the same and certain other matters of procedure, form or detail.

The delegation of legislative power is, therefore, of a normal character.

BILL No. 60 OF 1962

A Bill further to amend the Assam Rifles Act, 1941.

BE it enacted by Parliament in the Thirteenth Year of the Republic of India as follows:—

1. This Act may be called the Assam Rifles (Amendment) Act, 1962. Short title.

5 of 1941.

5 2. In section 1 of the Assam Rifles Act, 1941 (hereinafter referred to as the principal Act), in sub-section (2), for the words "the whole of Assam", the words "the whole of India" shall be substituted. Amendment of section 1.

3. For section 10 of the principal Act, the following sections shall be substituted, namely:— Substitution of new sections for section 10.

1 of 1872.

10 "10 (1) A Commandant, Assistant Commandant or rifleman shall be entitled to all the privileges which a police officer has under section 125 of the Indian Evidence Act, 1872, and any other enactment for the time being in force. Privileges of, and protection for acts done by, Commandant, Assistant Commandant, etc.

15 (2) In any suit or proceeding against a Commandant, Assistant Commandant or rifleman for any act done by him in pursuance of a warrant or order of a competent authority, it shall be lawful for him to plead that such act was done by him under the authority of such warrant or order.

20 (3) Any such plea may be proved by the production of the warrant or order directing the act, and if it is so proved, the Commandant, Assistant Commandant or rifleman, as the case

may be, shall thereupon be discharged from liability in respect of the act so done by him, notwithstanding any defect in the jurisdiction of the authority which issued such warrant or order.

(4) Notwithstanding anything contained in any other law for the time being in force, any legal proceeding (whether civil or criminal) which may lawfully be brought against a Commandant, Assistant Commandant or rifleman for anything done or intended to be done under the powers conferred by, or in pursuance of, any provision of this Act or the orders or rules made thereunder, shall be commenced within three months after the act complained of was committed and not otherwise, and notice in writing of such proceeding and of the cause thereof shall be given, where the defendant is a rifleman, to his superior officer, and in other cases, to the defendant, at least one month before the commencement of such proceeding.

Powers and duties that may be conferred or imposed by the Central Government on Commandant, Assistant, Commandant, etc.

10A. (1) The Central Government may, by general or special order, confer or impose upon any Commandant, Assistant Commandant or rifleman, any of the powers or duties conferred or imposed on a police officer of any class or grade by any law for the time being in force.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, the Central Government may invest any Commandant or Assistant Commandant with the powers of a Magistrate of any class for the purpose of inquiring into or trying any offence committed by a rifleman and punishable under this Act or any offence committed by a rifleman against the person or property of another rifleman or of any person acting with or assisting the Assam Rifles."

5 of 1898.

STATEMENT OF OBJECTS AND REASONS

The Assam Rifles Act, 1941, extends to the whole of Assam and is applicable to members of the Assam Rifles wherever they may be. Since the Assam Rifles are required to serve in areas outside the State of Assam, the restricted application of the Act to that State raises legal difficulties as regards exercise of powers under the Act by magistrates and other authorities outside the State. To remove these difficulties it is proposed to extend the Act to the whole of India.

Under section 10 of the Act, only the Commandants and Assistant Commandants are entitled to all the privileges which a police officer has under sections 42 and 43 of the Police Act, 1861, section 125 of the Indian Evidence Act, 1872 and any other enactment for the time being in force. It is considered necessary to confer such privileges on the riflemen also. It is also considered that the Commandants, Assistant Commandants and riflemen should have the same protection for acts done by them in the discharge of police duties as has been conferred on the members of the Central Reserve Police Force.

The riflemen are posted for duty in the N.E.F.A., Nagaland and other border areas where there are no regular police forces. During the discharge of their duties, it is necessary for them to make searches, arrests, etc. To enable them to make searches, arrests, etc., it is proposed to confer on them the powers of a police officer. To facilitate the inquiry and trial of offences committed by riflemen, it is also proposed to confer magisterial powers on the Commandants and Assistant Commandants.

The Bill seeks to achieve the above objects.

NEW DELHI:

The 13th June, 1962.

LAKSHMI N. MENON.

*BILL No. 62 OF 1962.

A Bill to amend and codify the law relating to marriage and matrimonial causes among Christians.

BE it enacted by Parliament in the Thirteenth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title,
extent and
commence-
ment.

1. (1) This Act may be called the Christian Marriage and Matrimonial Causes Act, 1962. 5

(2) It extends to the whole of India except the State of Jammu and Kashmir, and applies also to Christians domiciled in the territories to which this Act extends who are outside the said territories. 10

(3) Section 7 shall come into force at once, and the remaining provisions of this Act shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions.

2. In this Act, unless the context otherwise requires,— 15

(a) "Christian" means a person professing the Christian religion;

(b) "church building" includes any chapel or other building generally used for public Christian worship;

*The President has, in pursuance of clause (3) of article 117 of the Constitution of India, recommended to Lok Sabha the consideration of the Bill.

(c) "desertion" means the withdrawal by one spouse, without reasonable cause and without the consent or against the wish of the other spouse, from cohabitation with the other spouse with the intention of bringing cohabitation permanently to an end; and its grammatical variations and cognate expressions shall be construed accordingly;

(d) "diplomatic officer" means an ambassador, envoy, minister, charge d' affaires, high commissioner, commissioner or other diplomatic representative, or a counsellor or secretary of an embassy, legation or high commission;

(e) "district", in relation to a Marriage Registrar, means the area for which he is appointed as such under this Act;

(f) "district court" means, in any area for which there is a city civil court, that court, and, in any other area, the principal civil court of original jurisdiction, and includes any other civil court which may be specified by the State Government, by notification in the Official Gazette, as having jurisdiction in respect of the matters dealt with in this Act;

(g) "India" means the territories to which this Act extends;

(h) "licensed Minister" means a Minister of Church licensed under section 8 to solemnize marriages under this Act;

(i) "Marriage Registrar" means a Marriage Registrar appointed under section 9 or section 10;

(j) "Minister of a recognised Church" means a Minister of any Church which is a recognised Church within the meaning of this Act;

(k) "minor" means a person who has not completed the age of eighteen years;

(l) "prescribed" means prescribed by rules made under this Act;

(m) "prohibited relationship"—a man and any of the persons mentioned in Part I of the First Schedule, and a woman and any of the persons mentioned in Part II of the said Schedule, are within prohibited relationship;

Explanation.—"Relationship" includes,—

(a) relationship by half or uterine blood as well as by full blood;

(b) illegitimate blood relationship as well as legitimate; and all terms of relationship in this Act shall be construed accordingly;

(n) "recognised Church" means—

- (a) the Church of Rome, that is to say, the Church which regards the Pope of Rome as its spiritual head;
- (b) the Church of India, Burma and Ceylon;
- (c) the Church of Scotland as by law established; 5
- (d) any other Church declared to be a recognised Church under section 7;

(o) "Registrar-General" means—

- (i) a Registrar-General of Births, Deaths and Marriages appointed under the Births, Deaths and Marriages Registration Act, 1886, and 6 of 1886.
- (ii) in relation to any territories to which that Act does not extend, an officer performing the functions of a Registrar-General of Births, Deaths and Marriages under any corresponding law in force in those territories; 15

(p) "rule", in any expression denoting rules of any Church, includes a rite, ceremony or custom of that Church.

CHAPTER II

CONDITIONS FOR CHRISTIAN MARRIAGE

Marriages between Christians to be solemnized according to Act. 3. Every marriage between persons both of whom are Christians shall be solemnized in accordance with the provisions of this Act, unless the same is solemnized under the provisions of the Special Marriage Act, 1954. 20 43 of

Conditions of marriage. 4. A marriage may be solemnized between any two Christians if the following conditions are fulfilled, namely:— 25

- (i) neither party has a spouse living at the time of the marriage;
- (ii) the parties are not within prohibited relationship, unless the custom governing each of them permits of a marriage between the two; 30
- (iii) neither party is an idiot or a lunatic at the time of the marriage;
- (iv) the bridegroom has completed the age of eighteen years and the bride the age of fifteen years at the time of the marriage; 35

(v) where the bride has not completed the age of eighteen years, the consent in writing of her guardian in marriage or the permission of the district court under sub-section (4) of section 5, has been obtained for the marriage; and

5 (vi) where the marriage is solemnized outside India, both parties are domiciled in India.

5. (1) Whenever the consent of a guardian in marriage is necessary for a bride under this Act, the persons entitled to give such consent shall be the following in the order specified hereunder,
10 namely:—

(a) the father;

(b) the mother;

(c) the paternal grandfather;

(d) the paternal grandmother,

15 (e) the brother by full blood; as between brothers, the elder being preferred;

(f) the brother by half blood; as between brothers by half blood, the elder being preferred;

20 Provided that the bride is living with him and is being brought up by him;

(g) the paternal uncle by full blood; as between paternal uncles, the elder being preferred;

(h) the maternal grandfather;

(i) the maternal grandmother;

25 (j) the maternal uncle by full blood; as between maternal uncles, the elder being preferred;

Provided that the bride is living with him and is being brought up by him.

30 (2) No person shall be entitled to act as a guardian in marriage under sub-section (1) unless such person has himself completed the age of twenty-one years.

(3) Where any person entitled to be the guardian in marriage under sub-section (1) refuses, or is for any cause unable or unfit, to act as such; the person next in order shall be entitled to be the
35 guardian,

(4) Where no such person as is referred to in sub-section (1) is living and willing and able and fit to act as guardian in marriage, or where any guardian in marriage, without just cause, withholds his consent to the marriage, the permission of the district court shall be necessary for the marriage of the bride. 5

(5) The permission of the district court for the marriage of the bride under sub-section (4) may be applied for by a petition made by the parties to the intended marriage.

(6) Where such a petition is made, the district court shall examine the allegations of the petition in a summary manner and shall decide the matter after giving a reasonable opportunity to the parties to be heard. 10

(7) The decision of the district court granting or refusing permission under sub-section (4) shall be final.

(8) Notwithstanding anything contained in sub-section (1), where any person has been appointed or declared by a court to be the guardian of the person of the bride, he alone shall be entitled to act as guardian in marriage. 15

(9) Nothing in this section shall affect the jurisdiction of a court to prohibit by injunction an intended marriage if, in the interests of the bride for whose marriage consent is required, the court thinks it necessary to do so. 20

CHAPTER III

SOLEMNIZATION OF CHRISTIAN MARRIAGES

A.—Persons authorised to solemnize marriages

25

Who may
solemnize
marriages.

6. Marriages may be solemnized under this Act—

(a) by any Minister of a recognised Church;

(b) by any Minister of Church licensed under section 8 to solemnize marriages;

(c) by, or in the presence of, a Marriage Registrar appointed under section 9 or section 10. 30

Recognised
Churches.

7. (1) For the purpose of advising the Central Government as respects Churches to be declared as recognised Churches within the meaning of sub-clause (d) of clause (n) of section 2, the Central Government shall, by notification in the Official Gazette, establish a Committee consisting of such number of Christians, not exceeding five, as the Central Government may think fit to appoint, and it shall be the duty of the Committee to examine applications by Churches for being declared to be recognised Churches and to make recommendations to the Central Government thereon. 35

40

(2) In making any recommendation to the Central Government under sub-section (1), the Committee shall have regard to the following, among other matters, namely:—

- (i) whether the Church is properly organised;
- 5 (ii) whether the Church is registered under any law for the time being in force relating to the registration of societies in general or religious societies in particular;
- (iii) whether the Church has well-established rules for the solemnization of marriages;
- 10 (iv) whether the Church has proper places of worship;
- (v) whether, according to the rules of the Church, clergymen are ordinarily ordained to solemnize marriages;
- (vi) whether the strength or standing of the Church is such as to justify recognition being accorded thereto.

15 (3) The Central Government, after taking into consideration the recommendations made by the Committee under this section, may, by notification in the Official Gazette, declare any Church to be a recognised Church for the purposes of this Act, and any such notification may also declare a group of Churches belonging to any organisation or denomination to be recognised Churches.

8. The State Government may, by notification in the Official Gazette, grant licences to Ministers of Church to solemnize marriages within the whole or any part of the State.

Grant of
licences to
Ministers of
Church to
solemnize
marriage s.

25 9. (1) The State Government may, by notification in the Official Gazette, appoint any person to be a Marriage Registrar for any district.

Marriage
Registrars in
India.

(2) Where there are more Marriage Registrars than one in any district, the State Government shall appoint one of them to be the Senior Marriage Registrar.

30 (3) Where there is only one Marriage Registrar in a district, and such Registrar is absent from the district or is ill or his office is temporarily vacant, any person authorised in this behalf by the State Government, by general or special order, shall act as, and be, the Marriage Registrar of the district during such absence, illness or
35 temporary vacancy.

10. For the purposes of this Act in its application to Christians domiciled in India who are outside India, the Central Government may, by notification in the Official Gazette,—

Marriage
Registrars
outside India.

40 (a) in the case of the State of Jammu and Kashmir, appoint such officers of the Central Government as it may think fit to be the Marriage Registrars for the State or any part thereof; and

(b) in the case of any other country, place or area, appoint such diplomatic or consular officers as it may think fit to be the Marriage Registrars for the country, place or area.

B.—Marriages before Ministers of recognised Churches

Solemniza-
tion of mar-
riages by
Ministers of
recognised
Churches.

11. (1) Marriages may be solemnized under this Act by any Minister of a recognized Church according to the rules of the Church of which he is a Minister and in the presence of at least two witnesses. 5

(2) No such marriage shall be solemnized—

(a) if the Minister has reason to believe that the solemnization of the intended marriage would be contrary to the provisions of section 4; or

(b) if any other lawful impediment be shown to the satisfaction of the Minister why such marriage should not be solemnized; or 15

(c) unless a solemn declaration has been made before the Minister in the form specified in the Fourth Schedule—

(i) by the bridegroom, and

(ii) by the bride, or, if she is a minor for whose marriage the consent of the guardian is required under this Act, by the guardian on behalf of the bride. 20

C.—Marriages before licensed Ministers and Marriage Registrars

Notice of
intended
marriage to
licensed
Ministers,
etc., and
Marriage
Notice Book.

12. (1) When a marriage is intended to be solemnized by a licensed Minister or by or in the presence of a Marriage Registrar, the parties to the marriage shall give notice thereof in writing in the form specified in the Second Schedule— 25

(a) to the licensed Minister whom they desire to solemnize the marriage, or

(b) to the Marriage Registrar of the district in which at least one of the parties to the marriage has resided for a period of thirty days immediately preceding the date on which such notice is given. 30

(2) Where the bride is a minor for whose marriage the consent of the guardian is required under this Act, the notice to be given under sub-section (1) shall be signed on behalf of the bride by the guardian. 35

(3) The licensed Minister or the Marriage Registrar, as the case may be, shall keep all notices given under sub-section (1) with the

records of his office and shall also forthwith enter a true copy of every such notice in a book prescribed for that purpose, to be called the Marriage Notice Book.

13. Where a notice under section 12 is given to a licensed Minister, he shall proceed as follows:—

Procedure to be followed by licensed Minister on receipt of notice.

10 (a) if the parties intending marriage desire it to be solemnized in a particular church building, and if the licensed Minister be entitled to officiate therein, he shall cause the notice to be published by affixing a copy thereof to some conspicuous part of such church building;

15 (b) if he is not entitled to officiate as a Minister in such church building, he shall, notwithstanding anything contained in sub-section (3) of section 12, at his option, either return the notice to the person who delivered it to him, or deliver it to some other licensed Minister entitled to officiate therein, who shall thereupon act as if the notice were given by the parties to him under section 12;

20 (c) if it is intended that the marriage shall be solemnized in a private building, the licensed Minister, on receiving the notice under section 12, shall forward a copy thereof to the Marriage Registrar of the district, who shall cause it to be published by affixing it to some conspicuous place in his own office;

25 (d) if the bride intending marriage is a minor, the licensed Minister, on receiving the notice under section 12 shall, unless within twenty-four hours after its receipt he returns the same under clause (b), send by post or otherwise a copy of such notice to the Marriage Registrar of the district, or, if there be more than one Marriage Registrar of the district, to the Senior Marriage Registrar, and the Marriage Registrar or Senior Marriage Registrar, as the case may be, on receiving any such copy, shall 30 affix it to some conspicuous place in his own office, and the latter shall further cause a copy of the said notice to be sent to each of the other Marriage Registrars in the same district, who shall likewise publish the same in the manner above directed.

35 14. Where the notice under section 12 is given to a Marriage Registrar, he shall proceed as follows:—

Procedure to be followed by Marriage Registrar on receipt of notice.

(a) the Marriage Registrar shall cause the notice to be published by affixing a copy thereof to some conspicuous place in his own office;

40 (b) if the bride is a minor, the Marriage Registrar shall, within twenty-four hours after receiving the notice under section 12, send, by post or otherwise, a copy of the notice to each

of the other Marriage Registrars, if any, in the same district, who shall affix the copy to some conspicuous place in his own office;

(c) if either of the parties intending marriage is not permanently residing within the local limits of the district of the Marriage Registrar, the Marriage Registrar shall also cause a copy of such notice to be transmitted to the Marriage Registrar of the district within whose limits such party is permanently residing, and that Marriage Registrar shall thereupon cause a copy thereof to be affixed to some conspicuous place in his own office.

10

Issue of
certificate of
notice.

15. (1) Any licensed Minister or Marriage Registrar consenting or intending to solemnize any marriage under this Act shall, on being required so to do by or on behalf of either of the persons by whom the notice was given, issue under his hand a certificate of notice in the form specified in the Third Schedule.

15

(2) No such certificate shall be issued—

(a) until the expiration of seven days from the date of publication of the notice or where the bride is a minor, until the expiration of twenty-one days from the said date; and

(b) unless a solemn declaration has been made before the licensed Minister or the Marriage Registrar, as the case may be, in the form specified in the Fourth Schedule—

20

(i) by the bridegroom, and

(ii) by the bride, or, if she is a minor for whose marriage the consent of the guardian is required under this Act, by the guardian on behalf of the bride.

25

Objection to
certificate.

16. (1) Any person may, before the expiration of seven days from the date on which any notice has been published under section 13 or section 14, make an objection in writing to the marriage on the ground that it would contravene one or more of the conditions specified in section 4.

30

(2) If an objection is made under sub-section (1), the licensed Minister or the Marriage Registrar shall not issue the certificate under section 15 unless he has inquired into the matter of the objection and is satisfied that it ought not to prevent the issue of the certificate or the objection is withdrawn by the person making it.

35

(3) The licensed Minister or the Marriage Registrar shall not take more than thirty days from the date of the objection for the purpose of inquiring into the matter of the objection and arriving at a decision.

40

17. (1) If the licensed Minister or the Marriage Registrar fails to arrive at a decision on an objection to an intended marriage within the period specified in sub-section (3) of section 16, or upholds such an objection and refuses to issue the certificate of notice of marriage, either party to the intended marriage may, within a period of twenty-one days from the date of such refusal, apply by petition to the district court.

Application to district court against decision on objection.

(2) The district court may examine the allegations of the petition in a summary manner, and shall decide the matter after giving a reasonable opportunity to the parties to be heard.

(3) The decision of the district court on such petition shall be final, and the licensed Minister or the Marriage Registrar shall act in conformity with the decision.

18. Where an objection is made under section 16 to a Marriage Registrar outside India in respect of an intended marriage outside India, and the Marriage Registrar, after making such inquiry into the matter as he thinks fit, entertains a doubt in respect thereof, he shall not solemnize the marriage but shall transmit the record to the Central Government with such statement respecting the matter as he thinks fit to make, and the Central Government, after making such inquiry into the matter and after obtaining such advice as it thinks fit, shall give its decision thereon in writing to the Marriage Registrar, who shall act in conformity with the decision of the Central Government.

Procedure on receipt of objection by Marriage Registrar abroad.

19. No licensed Minister or Marriage Registrar shall issue a certificate of notice in respect of any marriage or solemnize any marriage under this Act—

Certificate not to be issued and marriage not to be solemnized in certain cases.

(a) if he has reason to believe that the solemnization of the intended marriage would be contrary to the provisions of section 4; or

(b) if any other lawful impediment be shown to his satisfaction why such certificate should not be issued or such marriage should not be solemnized.

20. After the issue of the certificate of notice by the licensed Minister, the marriage may be solemnized between the persons therein described by the licensed Minister according to such form or ceremony as obtains in the Church to which the licensed Minister belongs and in the presence of at least two witnesses.

Solemnization of marriage by licensed Minister.

21. (1) After the issue of the certificate of notice by the Marriage Registrar, the marriage may be solemnized between the persons therein described by or in the presence of the Marriage Registrar

Solemnization of marriage by Marriage Registrar.

according to such form or ceremony as the parties think fit to adopt and in the presence of at least two witnesses:

Provided that the marriage shall not be complete and binding on the parties unless each party says to the other in the presence of the Marriage Registrar and the witnesses and in any language 5 understood by the parties—

“I, (A.B.) take thee (C.D.) to be my lawful wife (or husband)”.

(2) The marriage may be solemnized—

(a) at the office of the Marriage Registrar; or 10

(b) at such other place in his district and within a reasonable distance from his office, as the parties may desire, and upon such conditions and the payment of such additional fees as may be prescribed.

Certificate void if marriage not solemnized within three months.

22. If a marriage is not solemnized within three months after the 15 date of the certificate issued by the licensed Minister or the Marriage Registrar under section 15, such certificate and all proceedings, if any, thereon shall be void, and no person shall proceed to solemnize the said marriage until a new notice has been given and the certificate thereof issued in the manner provided in this Chapter. 20

D.—Registration of marriages

Certificate of marriage and registration.

23. (1) When the marriage has been solemnized, the Minister of a recognised Church or the licensed Minister or the Marriage Registrar, as the case may be, shall enter a certificate thereof in the form specified in the Fifth Schedule in a book to be kept by him for 25 that purpose and to be called the Marriage Certificate Book, and such certificate shall be signed by the parties to the marriage and the witnesses.

(2) On a certificate being entered in the Marriage Certificate Book by the Minister of a recognised Church or the licensed Minister or the Marriage Registrar, the certificate shall be deemed to be 30 conclusive evidence of the fact that a marriage under this Act has been solemnized.

(3) Every Minister of a recognised Church, licensed Minister or Marriage Registrar in a State shall send to the Registrar-General of 35 that State, at such intervals and in such form as may be prescribed, a true copy of all entries made by him in the Marriage Certificate Book since the last of such intervals.

CHAPTER IV

RESTITUTION OF CONJUGAL RIGHTS

24. (1) When either the husband or the wife has, without rea- Restitution.
sonable excuse, withdrawn from the society of the other, the other
5 party may apply by petition to the district court for restitution of
conjugal rights.

(2) Nothing shall be pleaded in answer to such petition which
would not be a ground for judicial separation or for nullity of
marriage or for divorce.

10 (3) The court, on being satisfied of the truth of the statements
made in such petition, and that there is no legal ground why a decree
of restitution of conjugal rights should not be granted, may decree
restitution of conjugal rights accordingly.

CHAPTER V

JUDICIAL SEPARATION

15 25. Either party to a marriage, whether solemnized before or after Judicial
the commencement of this Act, may present a petition praying for a separation.
decree for judicial separation on any of the grounds specified in
section 30.

20 26. (1) Where a decree for judicial separation has been passed, it Effect of
shall no longer be obligatory for the petitioner to cohabit with the judicial sep-
respondent. aration on
duty to
cohabit.

(2) The court may, on the application by petition of either party
and on being satisfied of the truth of the statements made in such
25 petition, rescind the decree where the parties have expressed a desire
to come together and to resume cohabitation or where for any other
reason the court considers it just and reasonable to rescind the
decree.

CHAPTER VI

NULLITY OF MARRIAGE

30 27. Any marriage solemnized, whether before or after the com- Void marri-
mencement of this Act, shall be null and void and may, on a petition ages.
presented for the purpose, be so declared by a decree of nullity, if
it contravenes the condition specified in clause (i) or clause (ii) of
35 section 4.

28. (1) Any marriage solemnized, whether before or after the com- Voidable
mencement of this Act, shall be voidable and may be annulled by marriages.
a decree of nullity on any of the following grounds, namely:—

(a) that the marriage is in contravention of the condition
40 specified in clause (iii) of section 4; or

(b) that the respondent was impotent at the time of the
marriage and continued to be so till the institution of the pro-
ceeding; or

(c) that the consent of the petitioner, or where the consent of the guardian in marriage of the petitioner is required under clause (v) of section 4, the consent of such guardian, was obtained by force or fraud; or

(d) that the respondent was at the time of the marriage pregnant by some person other than the petitioner.

(2) Any marriage solemnized after the commencement of this Act shall be voidable and may be annulled by a decree of nullity on any of the following grounds, namely:—

(a) that the marriage is in contravention of the condition specified in clause (iv) of section 4; or

(b) that the marriage of the petitioner, being the wife, is in contravention of the condition specified in clause (v) of section 4.

(3) Notwithstanding anything contained in sub-section (1), no petition for annulling a marriage—

(a) on the ground specified in clause (c) of sub-section (1) shall be entertained, if—

(i) the petition is presented more than one year after the force had ceased to operate or, as the case may be, the fraud had been discovered; or

(ii) the petitioner has, with his or her full consent, lived with the other party to the marriage as husband or wife after the force had ceased to operate or, as the case may be, the fraud had been discovered;

(b) on the ground specified in clause (d) of sub-section (1) shall be entertained, unless the court is satisfied—

(i) that the petitioner was at the time of the marriage ignorant of the facts alleged;

(ii) that the proceedings have been instituted, in the case of a marriage solemnized before the commencement of this Act, within one year of such commencement and, in the case of a marriage solemnized after such commencement, within one year from the date of the marriage; and

(iii) that marital intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the existence of the grounds for a decree.

(4) Notwithstanding anything contained in sub-section (2), no petition for annulling a marriage under that sub-section shall be entertained if the petition is presented more than one year after the petitioner has completed the age of eighteen years.

5 29. (1) Where a marriage is null and void under section 27 by reason of the contravention of the condition specified in clause (i) or clause (ii) of section 4, any child begotten or conceived before the marriage is declared to be null and void, who would have been the legitimate child of the parties to the marriage if the marriage had
10 been valid, shall be deemed to be their legitimate child notwithstanding that the marriage is null and void. Legitimacy of children of certain void and voidable marriages.

(2) Where a marriage is annulled by a decree of nullity under section 28, any child begotten or conceived before the decree is made, who would have been the legitimate child of the parties to the
15 marriage if the marriage had been dissolved instead of having been annulled by a decree of nullity, shall be deemed to be their legitimate child notwithstanding the decree of nullity.

(3) Nothing contained in this section shall be construed as conferring upon any child of a marriage which is void or which is annul-
20 led by a decree of nullity any rights in or to the property of any person other than the parents in any case where, but for the passing of this Act, such child would have been incapable of possessing or acquiring any such rights by reason of his not being the legitimate child of his parents.

25

CHAPTER VII

DIVORCE

A.—Grounds of divorce

30 30. (1) Any marriage, solemnized whether before or after the commencement of this Act, may, on a petition presented either by the husband or the wife, be dissolved by a decree of divorce on the ground that the respondent— Grounds of divorce.

(i) has, since the solemnization of the marriage, committed adultery; or

35 (ii) has ceased to be a Christian by conversion to another religion; or

(iii) has been incurably of unsound mind for a continuous period of not less than three years immediately preceding the presentation of the petition; or

(iv) has, for a period of not less than three years immediately preceding the presentation of the petition, been suffering from a virulent and incurable form of leprosy; or

(v) has, for a period of not less than three years immediately preceding the presentation of the petition, been suffering from venereal disease in a communicable form; or

(vi) has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of the respondent if the respondent had been alive; or

(vii) has wilfully refused to consummate the marriage, and the marriage has not therefore been consummated; or

(viii) has failed to comply with a decree for restitution of conjugal rights for a period of two years or upwards after the passing of the decree against the respondent; or

(ix) has deserted the petitioner for a period of at least three years immediately preceding the presentation of the petition; or

(x) has, since the solemnization of the marriage, treated the petitioner with cruelty.

(2) A wife may also present a petition for the dissolution of her marriage by a decree of divorce on the ground that the husband has, since the solemnization of the marriage, been guilty of rape, sodomy or bestiality.

**Divorce
after decree
for judicial
separation.**

31. Where in respect of any marriage, solemnized whether before or after the commencement of this Act, a decree for judicial separation has been passed, and there has been no resumption of cohabitation as between the parties to the marriage for a period of two years or upwards after the passing of the decree, either party may, by an application in the proceeding in which the decree was passed, pray for a dissolution of the marriage by a decree of divorce; and the court may, on being satisfied of the truth of the statements made in such application, pass a decree accordingly.

**No petition
for divorce
to be presented
within
three years
of marriage.**

32. (1) Notwithstanding anything contained in this Act, it shall not be competent for any court to entertain any petition for dissolution of a marriage by a decree of divorce under section 30, unless at the date of the presentation of the petition three years have elapsed since the date of the marriage:

Provided that the court may grant leave to present a petition before the said three years have elapsed if the court thinks fit

- to do so on the ground that the case is one of exceptional hardship to the petitioner or of exceptional depravity on the part of the respondent; but any such leave may, in the interests of justice, be revoked by the court at any time before a *decree nisi* of divorce is passed, and where the leave is so revoked, the court may dismiss the petition without prejudice to any petition which may be brought after the expiration of the said three years upon the same or substantially the same facts as those alleged in support of the petition—so dismissed.
- 10 (2) In disposing of any application under this section for leave to present a petition for divorce before the expiration of three years from the date of the marriage, the court shall have regard to the interests of any children of the marriage and to the question whether there is a reasonable probability of a reconciliation between
15 the parties before the expiration of the said three years.

B.—*Re-marriage after divorce*

33. Where a decree of divorce has been made absolute under section 42 or a decree of divorce has been passed under section 31, and the time for appealing has expired without any appeal having been
20 presented or an appeal has been presented but has been dismissed and the decree of dismissal has become final, but not sooner, either party to the marriage may marry again.
- Re-marriage
of divorced
persons.

CHAPTER VIII

JURISDICTION AND PROCEDURE

- 25 34. Nothing contained in this Act shall authorise any court to grant any relief under Chapters IV to VII, except where—
- Relief to be
given to
Christians
only.
- (a) both the parties to the marriage are Christians at the time of the presentation of the petition; or
- 30 (b) both the parties to the marriage were Christians at the time of the marriage, and at least one of the parties is a Christian at the time of the presentation of the petition, or
- (c) the marriage was solemnized under any enactment repealed hereby, and at least one of the parties is a Christian at the time of the presentation of the petition.
- 35 35. Nothing contained in this Act shall authorise any court—
- Jurisdiction
of Indian
courts.
- (a) to make any decree of dissolution of marriage, except
where—
- (i) the parties to the marriage are domiciled in India at the time of the presentation of the petition; or

(ii) the petitioner, being the wife, was domiciled in India immediately before the marriage and has been residing in India for a period of not less than three years immediately preceding the presentation of the petition;

(b) to make any decree of nullity of marriage, except 5 where—

(i) the parties to the marriage are domiciled in India at the time of the presentation of the petition; or

(ii) the marriage was solemnized under this Act or under any enactment repealed hereby, and the petitioner 10 is either domiciled or residing in India at the time of the presentation of the petition;

(c) to grant any other relief under Chapters IV to VII, except where the petitioner is residing in India at the time of the presentation of the petition. 15

Court
to which
petition to
be made.

36. (1) Every petition under sub-section (5) of section 5 shall be presented to the district court within the local limits of whose ordinary civil jurisdiction the bride resides.

(2) Every petition under section 17 shall be presented to the district court within the local limits of whose ordinary original civil 20 jurisdiction the licensed Minister discharges his functions or the office of the Marriage Registrar is situate, as the case may be.

(3) Every petition under Chapters IV to VII shall be presented to the district court within the local limits of whose ordinary original civil jurisdiction— 25

(a) the respondent is residing at the time of the presentation of the petition, or

(b) the marriage was solemnized, or

(c) the husband and wife last resided together, or

(d) the petitioner is residing at the time of the presenta- 30 tion of the petition, provided the respondent is at that time, residing outside India.

Contents
and verifica-
tion of
petitions.

37. (1) Every petition presented under Chapters IV to VII shall state as distinctly as the nature of the case permits the facts on which the claim to relief is founded and shall also state that there 35 is no collusion between the petitioner and the other party to the marriage.

(2) The statements contained in every petition under Chapters IV to VII shall be verified by the petitioner or some other competent

person in the manner required by law for the verification of plaints and may, at the hearing, be referred to as evidence.

38. Subject to the other provisions contained in this Act and to such rules as the High Court may make in this behalf, all proceedings under this Act shall be regulated, as far as may be, by the Code of Civil Procedure, 1908.

Application
of Code of
Civil Pro-
cedure.

5 of 1908.

39. (1) In any proceeding under Chapters IV to VII, whether defended or not, if the court is satisfied that—

Duty of
court before
passing
decree.

10 (a) any of the grounds for granting relief exists and the petitioner is not in any way taking advantage of his or her own wrong or disability for the purpose of such relief, and

15 (b) where the ground of the petition is adultery, the petitioner has not in any manner been accessory to or connived at or condoned the adultery, or where the ground of the petition is cruelty, the petitioner has not in any manner condoned the cruelty, and

(c) the petition is not presented or prosecuted in collusion with the respondent, and

20 (d) there has not been any unnecessary or improper delay in instituting the proceeding, and

(e) there is no other legal ground why relief should not be granted,

then, and in such a case, but not otherwise, the court shall decree such relief accordingly.

25 (2) Before proceeding to grant any relief under Chapters IV to VII, it shall be the duty of the court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about a reconciliation between the parties.

30 (3) For the purpose of aiding the court in bringing about such reconciliation, the court may, if the parties so desire or if it thinks it just and proper so to do, adjourn the proceeding and refer the matter to any person named by the parties in this behalf or to any person nominated by the court if the parties fail to name any person,
35 with directions to report to the court as to whether a reconciliation can be, and has been, effected, and shall, in disposing of the proceeding, have due regard to the report.

40. (1) On a petition for divorce or judicial separation presented on the ground of adultery the petitioner shall make the alleged adulterer or adulteress a co-respondent, unless the petitioner is

Adulterer or
adulteress
to be a co-
respondent.

excused by the court from so doing on any of the following grounds namely:—

- (a) that the respondent is leading the life of a prostitute, and that the petitioner knows of no person with whom the adultery has been committed; 5
- (b) that the name of the alleged adulterer or adulteress is unknown to the petitioner although the petitioner has made due efforts to discover it;
- (c) that the alleged adulterer or adulteress is dead;
- (d) any other ground which the court may regard as sufficient in the circumstances of the case. 10

(2) The provisions of sub-section (1) shall, so far as may be, apply in relation to the answer of a respondent praying for divorce or judicial separation on the ground of adultery, as they apply in relation to a petition for divorce or judicial separation presented on that ground. 15

Relief to respondent in case of opposition to petition for divorce on certain grounds.

Decree nisi for divorce.

41. If, in any proceeding for divorce or judicial separation, the respondent opposes the relief sought on the ground of the petitioner's adultery, cruelty or desertion, the court may give the respondent the same relief to which he or she would have been entitled if he or she had presented a petition seeking such relief. 20

42. (1) Every decree for divorce under section 30 shall, in the first instance, be a *decree nisi*, not to be made absolute until after the expiration of six months from the pronouncing thereof, unless the court fixes a shorter time. 25

(2) After the pronouncing of the *decree nisi* and before the decree is made absolute, any person may, by an application made in accordance with such rules as may be made by the High Court in that behalf, show cause why the decree should not be made absolute by reason of the decree having been obtained by collusion or by reason of material facts not having been brought before the court, and in any such case the court may make the decree absolute, reverse the *decree nisi*, require further inquiry or otherwise deal with the case as the court thinks fit.

(3) Where a *decree nisi* has been obtained and no application for the decree to be made absolute has been made within six months from the pronouncement of the *decree nisi* by the party who obtained the decree, then, at any time within three months from the expiration of the said six months, the party against whom the *decree nisi* has been granted shall be at liberty to apply to the court and the court, on such application, may make the decree absolute, 35 40

reverse the *decree nisi*, require further inquiry or otherwise deal with the case as the court thinks fit.

43. (1) A husband or wife may, on a petition for divorce or for judicial separation, claim damages from any person on the ground of adultery with the wife or husband of the petitioner. Damages from adulterer or adulteress.

(2) The court may direct in what manner the damages recovered on any such petition are to be paid or applied, and may direct the whole or any part of the damages to be settled for the benefit of the children, if any, of the marriage, or as a provision for the maintenance of the wife, or husband.

44. Where in any proceeding under Chapters IV to VII it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum, as, having regard to the petitioner's own income and the income of the respondent, may seem to the court to be reasonable. Maintenance *pendente lite* and expenses of proceedings.

45. (1) Any court exercising jurisdiction under Chapters IV to VII may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall, while the applicant remains unmarried, pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant and the conduct of the parties, may seem to the court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent. Permanent alimony and maintenance.

(2) If the court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may, at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just.

(3) If the court is satisfied that the party in whose favour an order has been made under this section has remarried, or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, it shall rescind the order.

Disposal of
property.

46. (1) In any proceeding under Chapter VI or Chapter VII, the court may make such provisions in the decree as it deems just and proper with respect to any property presented, at or about the time of the marriage, which may belong jointly to both the husband and the wife. 5

(2) In any case in which the court pronounces a decree for divorce or nullity of marriage, the court may inquire into the existence of ante-nuptial or post-nuptial settlements made on the parties whose marriage is the subject of the decree, and may make such orders, with reference to the application of the whole or any 10 part of the property so settled (whether the settlement is for the benefit of the children of the marriage or of the parties to the marriage or both), as the court thinks fit.

(3) The court shall not make any order under sub-section (2) for the benefit of the parents or either of them at the expense of the 15 children.

Custody of
children.

47. In any proceeding under Chapters IV to VII, the court may, from time to time, pass such interim orders and make such provisions in the decree as it may deem just and proper with respect to the custody, maintenance and education of minor children, consistently 20 with their wishes, wherever possible, and may, after the decree, upon application by petition for the purpose, make, from time to time, all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such decree or interim orders in case the proceeding for obtain- 25 ing such decree were still pending, and the court may also from time to time revoke, suspend or vary any such orders and provisions previously made.

Proceedings
may be in
camera and
may not be
published.

48. A proceeding under this Act shall be conducted *in camera* if either party so desires or if the court so thinks fit to do, and it shall 30 not be lawful for any person to print or publish any matter in relation to such proceeding except with the previous permission of the court.

Appeals
from decrees
and orders.

49. All decrees and orders made by the court in any proceeding under this Act shall be appealable as decrees of the court made in 35 the exercise of its original civil jurisdiction and such appeal shall lie to the court to which appeals ordinarily lie from the decisions of the court given in the exercise of its original civil jurisdiction:

Provided that there shall be no appeal on the subject of costs only.

Enforcement
of decrees
and orders.

50. All decrees and orders made by the court in any proceeding 40 under this Act shall be enforced in the like manner as the decrees and orders of the court made in the exercise of its original civil jurisdiction for the time being are enforced.

CHAPTER IX

PENALTIES

51. Every person whose marriage is solemnized under this Act and who, during the lifetime of his or her wife or husband, contracts any other marriage shall be subject to the penalties provided in section 494 and section 495 of the Indian Penal Code for the offence of marrying again during the lifetime of the husband or wife, and the marriage so contracted shall be void.

Punishment
of bigamy.

52. Every person who procures a marriage of himself or herself to be solemnized under this Act in contravention of the conditions specified in clauses (ii), (iv) and (v) of section 4 shall be punishable—

Punishment
for contra-
vention of
certain other
conditions
for marriage.

(a) in the case of a contravention of the condition specified in clause (ii) of section 4, with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both,

(b) in the case of a contravention of the condition specified in clause (iv) of section 4, with simple imprisonment which may extend to fifteen days, or with fine which may extend to one thousand rupees, or with both, and

(c) in the case of a contravention of the condition specified in clause (v) of section 4, with fine which may extend to one thousand rupees.

53. Whoever, for the purpose of procuring a marriage or licence of marriage, intentionally,—

Penalty for
false oath,
declaration,
notice or
certificate for
procuring
marriage.

(a) where an oath or declaration is required by this Act, or by any Church according to the rules of which a marriage is intended to be solemnized, makes a false oath or declaration, or

(b) where a notice or certificate is required by this Act, signs a false notice or certificate,

shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

54. Whoever makes an objection to the issue, by a licensed Minister or a Marriage Registrar, of a certificate, by falsely representing himself to be a person whose consent to the marriage is required by law, knowing or believing such representation to be false, or not having reason to believe it to be true, shall be deemed to be guilty of the offence described in section 205 of the Indian Penal Code and shall be punishable accordingly.

False person-
ation by
person ob-
jecting to
marriage.

Solemnizing marriage without due authority.

55. Whoever, not being authorised by section 6 to solemnize marriages, solemnizes or professes to solemnize under this Act a marriage between persons who are Christians, shall be punishable with imprisonment for a term which may extend to ten years, and shall also be liable to fine which may extend to two thousand rupees. 5

Penalty for not deciding objections within prescribed period or refusal to solemnize marriage.

56. (1) Whoever, being a licensed Minister or a Marriage Registrar, in contravention of the provisions of sub-section (3) of section 16, wilfully or without just cause takes more than thirty days from the date of any objection to an intended marriage for the purpose of inquiring into the matter of the objection and arriving at a decision, shall be punishable with fine which may extend to five hundred rupees. 10

(2) Whoever, being a licensed Minister or a Marriage Registrar, refuses, without just cause, to solemnize a marriage under this Act, shall be punishable with simple imprisonment for a term which may extend to one year, or with fine which may extend to five hundred rupees, or with both. 15

Penalty for wrongful action of Marriage Registrar or Minister, etc.

57. Whoever, being authorized under this Act to solemnize a marriage, knowingly and wilfully—

(a) solemnizes such marriage— 20

(i) without publishing a notice regarding such marriage as required by any provision of this Act, or

(ii) in contravention of any other provision contained in this Act, or

(b) issues any certificate in contravention of any provision contained in this Act, 25

shall be punishable with simple imprisonment for a term which may extend to one year, or with fine which may extend to five hundred rupees, or with both.

Destroying or falsifying Marriage Certificate Books.

58. Whoever, by himself or another, wilfully destroys or injures any Marriage Certificate Book, or any part thereof or any authenticated extract therefrom, or falsely makes or counterfeits any part of such book, or wilfully inserts any false entry in any such book or authenticated extract, shall be punishable with imprisonment for a term which may extend to seven years and shall also be liable to fine which may extend to two thousand rupees. 30 35

Penalty for publishing proceedings held in camera.

59. Any person who prints or publishes any matter in contravention of the provisions contained in section 48 shall be punishable with fine which may extend to one thousand rupees.

60. No prosecution for any offence punishable under section 52, section 53, section 54, section 55, section 56, section 57, section 58 or section 59 shall be instituted after the expiry of two years from the date on which the offence is committed.

Limitation
for prosecution.

CHAPTER II.

MISCELLANEOUS.

61. (1) Where any person makes an objection against the issue of any certificate of notice of marriage and the Marriage Registrar under section 16, or the district court under sub-section (4) of section 5 or under section 17, declares that the objection is not reasonable and has not been made in good faith, the Marriage Registrar or the district court, as the case may be, may, after giving such person a reasonable opportunity of being heard, award, by way of compensation, costs, not exceeding one thousand rupees, to the parties to the intended marriage.

Liability for
frivolous
objections.

(2) Any person aggrieved by an order of the Marriage Registrar or the district court under sub-section (1) may, within a period of thirty days from the date of the order, appeal to the district court or the High Court, as the case may be.

(3) Subject to any order passed on appeal under sub-section (2), the order of the Marriage Registrar or the district court under sub-section (1) shall be final.

(4) Any order of costs made under sub-section (1) may be executed in the same manner as a decree passed by the district court within the local limits of whose jurisdiction the office of the Marriage Registrar is situate.

62. Whenever any marriage has been solemnized between two Christians under this Act in accordance with the provisions of this Act, it shall not be void merely on account of any irregularity in respect of any of the following matters, namely:—

Savings re-
garding ir-
regularities.

(i) any statement made in regard to the dwelling-place of the persons married;

(ii) the notice of the marriage;

(iii) the certificate of the notice of the marriage or translation thereof;

(iv) the registration of the marriage.

63. (1) Any person authorised to solemnize a marriage under this Act, who discovers any error in the form or substance of any entry in the Marriage Certificate Book may, within one month next after the discovery of such error, in the presence of the persons

Correction
of errors.

married, or, in case of their death or absence, in the presence of two other witnesses, correct the error by entry in the margin, without any alteration of the original entry and shall sign the marginal entry and add thereto the date of such correction.

(2) Every correction made under this section shall be attested by the witnesses in whose presence it was made. 5

(3) Where a copy of any entry has already been sent under subsection (3) of section 23 to the Registrar-General, such person shall make and send in like manner a separate certificate of the original erroneous entry and of the marginal corrections therein made. 10

Solemnization of marriages by Ministers of Church in places sanctioned by custom or usage.

64. Subject to the other provisions contained in this Act, a marriage under this Act may be solemnized by a Minister of a recognised Church or a licensed Minister—

(a) in a church building, or

(b) in any other place agreed upon between the parties to the marriage, if solemnization at such place is in accordance with the custom or usage applicable to the community to which the parties to the marriage belong. 15

Marriage Registrars to be deemed to be public servants.

65. Every Marriage Registrar shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code. 20 45 of 1960.

Inspection of Marriage Notice Book.

66. The Marriage Notice Book shall be open for inspection at all reasonable times, without fee, by any person desirous of inspecting the same.

Inspection of Marriage Certificate Book.

67. (1) The Marriage Certificate Book kept under this Act shall at all reasonable times be open for inspection and shall be admissible as evidence of the statements therein contained. 25

(2) Certified extracts from the Marriage Certificate Book shall, on application, be given by the person who solemnized the marriage or other person having the custody for the time being of the Marriage Certificate Book, to any person who applies for the same. 30

(3) Inspection of the Marriage Certificate Book under sub-section (1) and the grant of certified extracts therefrom under sub-section (2) shall be—

(a) without fee, if applied for by the parties to the marriage at or about the time of the marriage, 35

(b) subject to the payment of the prescribed fees, in other cases.

Certified copy to be evidence.

68. Every certified copy, purporting to be signed by the person entrusted under this Act with the custody of any Marriage Certificate

Book, of an entry of a marriage in such Book, shall be received in evidence without production or proof of the original.

69. (1) Any notice to be given or declaration to be made by any person in respect of an intended marriage under this Act may be given or made in a language commonly in use in the State or the part of State in which the notice is given or declaration made; or in English.

Language of notices and declarations.

(2) Every person solemnizing a marriage under this Act shall satisfy himself that the parties to the marriage have understood the contents of the notice given and the declaration made by each of them, and (where a certificate of notice of marriage is required to be issued under this Act) of the certificate of notice of marriage issued for the marriage.

70. No Minister of a recognised Church shall be compelled to solemnize any marriage, the solemnization of which would be contrary to the rules of the Church of which he is a Minister.

Ministers of recognised Churches not compelled to solemnize marriages contrary to the rules of the Church.

5 of 1908. 71. For the purpose of any inquiry under this Act, the Marriage Registrar shall have all the powers vested in a civil court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters, namely:—

Powers of Marriage Registrars in respect of inquiries.

- (a) summoning and enforcing the attendance of witnesses and examining them on oath;
- (b) discovery and inspection;
- (c) compelling the production of documents;
- (d) reception of evidence on affidavits; and
- (e) issuing commissions for the examination of witnesses;

45 of 1860. and any proceeding before the Marriage Registrar shall be deemed to be a judicial proceeding within the meaning of section 193 of the Indian Penal Code.

30 *Explanation.*—For the purpose of enforcing the attendance of any person to give evidence, the local limits of the jurisdiction of the Marriage Registrar shall be the local limits of his district.

72. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

Power to make rules.

35 (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the duties and powers of Marriage Registrars and the areas in which they may exercise jurisdiction;

(b) the manner in which a Marriage Registrar may hold inquiries under this Act, and the procedure therefor;

(c) the form and manner in which any books required by or under this Act shall be maintained;

(d) the fees that may be levied for the performance of any duty imposed upon any person under this Act; 5

(e) the conditions under which licences to solemnize marriages may be issued by the State Government, and the circumstances under which they may be revoked;

(f) the surrender of such licences on the expiry thereof by revocation or otherwise;

(g) the procedure to be followed by the Committee constituted under section 7;

(h) the form in which, and the intervals within which, copies of entries in the Marriage Certificate Book shall be sent to the Registrar-General; 15

(i) any other matter which may be, or requires to be, prescribed.

(3) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days, which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall there- 25 after have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Rules by
the High
Court.

73. The High Court may, by notification in the Official Gazette, make such rules consistent with the provisions contained in this Act as it may consider expedient for the purpose of regulating the procedure to be followed in petitions under sub-section (5) of section 5 or under section 17, and for the purpose of carrying into effect the provisions of Chapters IV to VII. 35

Savings
regarding
marriages
solemnized
before the
Act.

74. A marriage solemnized before the commencement of this Act, which is otherwise valid, shall not be deemed to be invalid merely by reason of any provision contained in this Act.

Savings for
other
marriages.

75. Nothing in this Act shall affect the provisions of the Special Marriage Act, 1931, or apply to any marriage solemnized under that 40 43 of 1954. Act.

4 of 1869.
15 of 1872.
16 & 17
Geo. 5, c.
40. 3 & 4
Geo. 6, c.
35. 9 & 10
Geo. 6, c. 5.

76. (1) The Indian Divorce Act, 1869, the Indian Christian Marriage Act, 1872, the Indian and Colonial Divorce Jurisdiction Act, 1926, the Indian and Colonial Divorce Jurisdiction Act, 1940, the Indian Divorce Act, 1945, and any enactment corresponding to the Indian Christian Marriage Act, 1872, in force in the territories which, immediately before the first day of November, 1956, were comprised in the States of Travancore-Cochin and Manipur, are hereby repealed.

(2) Notwithstanding such repeal—

15 of 1872. 10

(a) all marriages duly solemnized under the Indian Christian Marriage Act, 1872, or any such corresponding enactment, shall be deemed to have been solemnized under this Act;

4 of 1869.
16 & 17
Geo. 5, c.
40. 3 & 4
Geo. 6, c.
35. 15 of
1872. 15

(b) all suits and proceedings in causes and matters matrimonial which, when this Act comes into force, are pending in any court under the Indian Divorce Act, 1869, or under the Indian and Colonial Divorce Jurisdiction Act, 1926, or under the Indian and Colonial Divorce Jurisdiction Act, 1940, or under the Indian Christian Marriage Act, 1872, or any such corresponding enactment, shall be dealt with and decided by such court as if this Act had not been passed.

10 of 1897.
16 & 17
Geo. 5, c.
40. 3 & 4
Geo. 6, c.
35. 9 & 10
Geo. 6, c. 5. 25

(3) The provisions of sub-section (2) shall be without prejudice to the provisions contained in section 6 of the General Clauses Act, 1897, which shall also apply to the repeal of the Indian and Colonial Divorce Jurisdiction Act, 1926, the Indian and Colonial Divorce Jurisdiction Act, 1940, the Indian Divorce Act, 1945, and any such corresponding enactment.

THE FIRST SCHEDULE

[See section 2(m)]

PROHIBITED RELATIONSHIP

PART I

1. Mother.	5
2. Father's widow (step-mother).	
3. Mother's mother.	
4. Mother's father's widow (step grand-mother).	
5. Father's mother.	
6. Father's father's widow (step grand-mother).	10
7. Daughter.	
8. Son's widow.	
9. Daughter's daughter.	
10. Daughter's son's widow.	
11. Son's daughter.	15
12. Son's son's widow.	
13. Sister.	
14. Wife's daughter (step-daughter).	
15. Wife's mother.	
16. Wife's son's daughter (step-son's daughter).	20
17. Wife's daughter's daughter (step-daughter's daughter).	
18. Wife's father's mother.	
19. Wife's mother's mother.	

Explanation.—For the purposes of this Part, the expression “widow” includes a divorced wife.

25

PART II

20. Father.	
21. Mother's husband (step-father).	
22. Father's father.	
23. Father's mother's husband (step grand-father).	30
24. Mother's father.	
25. Mother's mother's husband (step grand-father)	
26. Son.	
27. Daughter's husband.	
28. Son's son.	35
29. Son's daughter's husband.	
30. Daughter's son.	
31. Daughter's daughter's husband.	
32. Brother.	
33. Husband's father.	40
34. Husband's son (step-son).	

35. Husband's son's son (step-son's son).

36. Husband's daughter's son (step-daughter's son).

37. Husband's father's father.

38. Husband's mother's father.

5 *Explanation.*—For the purposes of this Part, the expression “husband” includes a divorced husband.

THE SECOND SCHEDULE

[See section 12(1)]

FORM OF NOTICE OF INTENDED MARRIAGE

10 To

The [Licensed Minister]*

[Marriage Registrar]* for.....

We hereby give you notice that a marriage under the Christian Marriage and Matrimonial Causes Act, 1962, is intended to be
15 solemnized between us within three calendar months from the date hereof.

Name	Condition	Occupation	Date of birth	Dwelling place	Permanent dwelling place, if present dwelling place not permanent	Length of residence	Church, chapel or place of worship in which marriage is to be solemnized (if the marriage is to be solemnized)
20							
25							

A.B. Unmarried

Widower

30

Divorcee

C.D. Unmarried

Widow

Divorcee

Witness our hands, this.....
35 day of..... 19.....

(Sd.) A.B.

(Sd.) C.D.

NOTE.—In the case of a minor bride for whose marriage the consent of her guardian is required, the guardian should sign on
40 her behalf.

*Strike off what is inapplicable.

THE THIRD SCHEDULE

[See section 15(1)]

FORM OF CERTIFICATE OF NOTICE

I,.....do hereby certify that, on the.....day of, notice was duly entered in my Marriage Notice Book of the marriage 5 intended between the parties therein named and described, delivered under the hand of both the parties, that is to say,—

Name	Condition	Occupation	Date of birth	Dwell- ing place	Permanent dwelling place, if present dwelling place not permanent	Length of residence	Church, chapel or place of worship in which mar- riage is to be solemn- ized (if the marriage is to be so solemnized)	10 15
------	-----------	------------	---------------	---------------------	---	------------------------	---	----------------------------------

A.B. Unmarried

Widower

20

Divorcee

C.D. Unmarried

Widow,Divorcee

and that the declaration required by section*..... of the 25
Christian Marriage and Matrimonial Causes Act, 1962, *has been
duly made by the said.....

Date of notice entered.....

Date of certificate given.....

Witness my hand, this..... day of..... 30
19.....

(Sd.)

This certificate will be void unless the marriage is solemnized on
or before the.....day of.....19.....

Licensed Minister†

35

Marriage Registrar†

*To be filled up.

†Strike off what is inapplicable.

THE FOURTH SCHEDULE

[See sections 11 (2) (c) and 15 (2) (b)]

DECLARATION TO BE MADE BY THE BRIDEGROOM

I, A.B., hereby declare as follows:—

- 5 1. I am at the present time unmarried (or a widower or a
 divorcee, as the case may be).
2. I have completed.....years of age.
3. I am not related to C.D. (the bride) within the prohibited
 relationship.
- 10 4. I am a Christian.
5. I am aware that, if any statement in this declaration is false,
 I am liable to imprisonment and also to fine.

(Sd.) A. B. (the Bridegroom).

DECLARATION TO BE MADE BY THE BRIDE

15 I, C.D., hereby declare as follows:—

1. I am at the present time unmarried (or a widow or a
 divorcee, as the case may be).
2. I have completed.....years of age.
3. I am not related to A.B. (the bridegroom) within the
20 prohibited relationship.
4. I am a Christian.
5. Consent of my guardian in marriage, Shri.....has
 been obtained to my proposed marriage with A.B.*

*Strike off if not applicable.† If in lieu of guardian's consent, permission of the district court has been obtained, state so, giving full particulars relating thereto.

6. I am aware that, if any statement in this declaration is false,
I am liable to imprisonment and also to fine.

(Sd.) C.D. (the Bride).

NOTE.—In the case of a minor bride for whose marriage the
consent of her guardian is required, the guardian should 5
sign on her behalf.

Signed in our presence by the above-named A.B. and C.D. So
far as we are aware there is no lawful impediment to the marriage.

(Sd.) G.H.

(Sd.) I.J.

} Two witnesses.

10

(Countersigned) E.F.

Minister of a recognised Church*

Licensed Minister*

Marriage Registrar*

Dated the

day of 19

15

*Strike off what is inapplicable.

THE FIFTH SCHEDULE

[See section 23(1)]

FORM OF CERTIFICATE OF MARRIAGE

I, E.F., hereby certify that on the.....day of..... 20
19.....A.B. and C.D.** appeared before me and that the declara-
tion required by section† of the Christian
Marriage and Matrimonial Causes Act, 1962, was duly made, and
that a marriage under that Act was solemnized between them in my

**Herein give particulars of the parties,

†To be entered.

presence and in the presence of two witnesses who have signed hereunder.

(Sd.) E.F.

*Minister of a recognised Church**

*Licensed Minister**

*Marriage Registrar**

(Sd.) A.B.

Bridegroom.

(Sd.) C.D.

Bride.

(Sd) G.H.

(Sd.) I.J.

} *Two witnesses.*

Dated the day of 19

*Strike off what is inapplicable.

STATEMENT OF OBJECTS AND REASONS

This Bill seeks to amend and codify the law relating to marriage and matrimonial causes amongst Christians in India on the lines recommended by the Law Commission in its Fifteenth and Twenty-second Reports. The Commission dealt with the subject in its Fifteenth Report and thereafter a Bill giving effect to the recommendations in that Report was circulated by the Commission for public opinion and the Twenty-second Report contains its final recommendations on the subject.

2. The notes on clauses explain the salient provisions of the Bill.

NEW DELHI;

ASOKE K. SEN.

The 15th June, 1962.

Notes on clauses

Clause 1.—The territorial operation of the Act will secure that it applies to all marriages solemnized within India (except the State of Jammu and Kashmir) while in its extra-territorial operation it will also apply to Christians domiciled in India who are outside the said territories.

Clause 1 (3) provides for section 7 coming into force at once so that, if it is necessary to do so, the requisite machinery may be set up in advance for the recognition of churches, the ministers of which would automatically be entitled to solemnize marriages.

Clause 2.—The definition of "Church building" is new and has been included in order to avoid confusion between the church as denoting the organization and the church as denoting the place of worship.

"desertion".—An intention on the part of the deserting spouse to forsake or abandon the other spouse is an essential ingredient of desertion and the definition of "desertion" contained in the Hindu Marriage Act, 1955, and the Special Marriage Act, 1954, has been suitably revised in order to bring out all the ingredients of desertion more clearly. Factual separation has been brought out by the words "withdrawal by one spouse from cohabitation with the other spouse".

"minor".—The definition of "minor" in the Christian Marriage Act, 1872, has been modified by substituting the age of 18 years for the age of 21 years in conformity with the general law. The exception in the case of widowers and widows has been omitted since even widowers and widows, if minor, should be subject to the special provisions applicable to minors.

"recognised Church".—Ministers of recognised churches would automatically be entitled to solemnize marriages, and this expression is defined to include the Churches specified in the existing Act, namely, the Church of Rome, the Church of India, Burma and Ceylon and the Church of Scotland and also to include any other church which may hereafter be recognised under clause 7.

Clause 3.—In conformity with other similar laws on the subject of marriage the scope of the Bill is limited to cases where both the

parties are Christians. Marriages solemnized under the Special Marriage Act, 1954, have necessarily to be excluded from the scope of this law. It is not necessary to expressly provide that marriages solemnized otherwise than in accordance with the provisions of this Act shall be void.

Clause 4 lays down the conditions for a valid Christian marriage. It is to a large extent based on the corresponding provisions in the Hindu Marriage Act, 1955, and the Special Marriage Act, 1954. The lists of prohibited relationships are, however, made as short as possible so that the need for dispensation from any extraneous source does not arise. The necessary exception in favour of custom, as in the Hindu Marriage Act, 1955, has also been made. Care has, however, been taken to ensure that no Minister of a recognised Church is required to solemnize a marriage which is contrary to the rules of his Church (*Clause 70*).

Clause 5.—This clause is intended to be a complete code relating to guardians in marriage. Although based on the corresponding provision in the Hindu Marriage Act, 1955, it makes important departures therefrom. The list of guardians is made as comprehensive as possible and the procedure for obtaining the consent of the district court, wherever necessary, is also laid down.

Clauses 6, 7, 8 and 9.—Marriages under the new law can be solemnized in three modes, (1) by or before the Marriage Registrar (which is a civil marriage), (2) by ministers of recognized churches, and (3) by ministers licensed by the State—the two latter being sacramental marriages. Churches referred to in section 3 of the Christian Marriage Act, 1872, namely, the Church of Rome, the Church of India, Burma and Ceylon and the Church of Scotland will automatically become recognised churches under this law while the provision contained in this clause will enable new churches which are in the process of formation or have been formed in the mean time and which satisfy the prescribed conditions to obtain recognition. A Committee of Christians appointed by the Central Government under clause 7 will recommend to the Central Government which churches should be recognised for the purpose. Other ministers of church will be licensed under clause 8.

Clause 10.—Since the new Act will apply to persons domiciled outside India, it is necessary to provide for the appointment of Marriage Registrars outside India.

Clause 11.—Since the proposed conditions of marriage will apply to all marriages solemnized under the Act, sub-clause (2) seeks to

impose a specific obligation on all persons solemnizing marriages under the Act to see that the conditions for marriage are fulfilled; that there is no lawful impediment to the marriage; and that the parties make a declaration to that effect.

Clauses 12 to 22.—These clauses deal with the procedure to be followed by licensed Ministers and Marriage Registrars and are modelled on the provisions in that behalf contained in the existing Act and the Special Marriage Act, 1954. Wherever necessary, the time limits prescribed for some specific action to be taken has been enlarged. In clause 20 it is provided that the licensed Minister in solemnizing marriages should follow the rules of the church to which he belongs instead of the matter being left to his choice as at present.

Clause 23.—The provisions regarding registration of marriages which occupy 13 sections in the existing Act have been put here in a simplified and brief form. A uniform procedure has been applied to all marriages under the Act. This provision is modelled on the corresponding provision in the Special Marriage Act, 1954.

Clause 24.—This clause reproduces the existing provision for restitution of conjugal rights in the Indian Divorce Act, 1869, with suitable changes in the light of similar provisions in the Hindu Marriage Act, 1955, and the Special Marriage Act, 1954.

Clause 25.—The reference to divorce *a mensa et thoro* has been omitted as unnecessary and the grounds for judicial separation are the same as the grounds for divorce. As Roman Catholics do not recognise divorce and as there are considerable sections of Protestants who are also averse to divorce and as the legal systems based on the canonical law generally provide only for judicial separation, the Bill seeks to continue this relief although the grounds are the same as for divorce.

Clause 26.—This clause follows similar provisions in the Hindu Marriage Act, 1955, and the Special Marriage Act, 1954. Although clause 31 allows either party to a decree for judicial separation to apply for divorce after the expiry of the prescribed period, this clause does not put the respondent on the same footing as the petitioner in a decree for judicial separation as regards the obligation to co-habit.

The only justification for setting aside a decree for judicial separation would be a change in the circumstances. Sub-clause (2) has been suitably modified for this purpose.

Clause 27.—Deals with void marriages and follows section 11 of the Hindu Marriage Act, 1955, except for the omission of the words

"on a petition presented by either party thereto" as a void marriage can be impugned by other parties also.

Clause 28 deals with voidable marriages and is patterned on section 12 of the Hindu Marriage Act, 1955. Sub-clause (2), however, is new. It provides that a marriage is voidable if the parties to the marriage are below age or if the guardian's consent for the marriage of the minor girl has not been obtained. This provision will, however, apply only to marriages solemnized after this Bill becomes law. It is also provided that no such marriage can be avoided after the expiry of one year from the date on which the petitioner has completed the age of 18 years.

Clause 29.—Section 21 of the Indian Divorce Act, 1869, is confined to two cases of nullity, namely, where the former spouse was living and insanity; and it is only in such cases that children may be regarded as legitimate in certain circumstances. Clause 29 on the other hand is modelled on similar provisions in the Hindu Marriage Act, 1955, and the Special Marriage Act, 1954, and provides for the children being legitimate in all cases irrespective of good faith of the parties, etc. Such children are also given a right of succession in regard to the property of either parent.

Clause 30.—The existing grounds for divorce have been enlarged. Incidentally, wilful refusal to consummate a marriage should be treated as a fault arising after the marriage as is sought to be done in this clause, and not as a fault existing at the time of the marriage so as to make it voidable as section 25 of the Special Marriage Act, 1954, purports to do.

Clause 31 is new. A proceeding for judicial separation is considered a waste of time by some persons while others hold the view that it should be retained for the purpose of preserving the sanctity of marriage. See also the notes under clause 25. While retaining the provision respecting judicial separation, this clause, by way of compromise, provides that no separate proceeding need be initiated for divorce if parties to a decree for judicial separation have not come together for more than two years after the divorce. A mere application in the same suit is sufficient and such an application may be made by either party to the marriage.

Clause 32 follows similar provisions in the Special Marriage Act, only in the case of misapprehension or concealment as to the nature 1954 and the Hindu Marriage Act, 1955, with some modifications. It is now provided that leave granted may be revoked by the court in the interests of justice, while in the other Acts it can be revoked

of the case. Further, instead of the complicated procedure provided in the other two Acts as to the order to be passed when leave is revoked, a simple provision is being made that the court will dismiss the petition without prejudice to any other petition which may be brought after the expiry of the three year period.

Clause 33.—It is now provided that the parties to a decree for divorce may re-marry once the decree has become final. There is no waiting period after the decree has become final as in the existing Act.

Clause 34.—The existing provision in the Indian Divorce Act, 1869, authorises the court to grant relief under the Act where either the petitioner or the respondent professes the Christian religion at the time of the petition. It is more logical in the new scheme of things to provide that the parties must have been Christians at the time of the marriage, or that the parties must have been Christians at the time of the marriage and at least one of the parties is a Christian at the time of the petition, or both the parties are Christians at the time of the petition, and this is what clause 34 does. The rights of persons married under the existing Act are, however, protected.

Clause 35.—While generally following the language of section 2 of the Indian Divorce Act, 1869, this clause introduces a new provision under which a decree may also be passed in favour of a petitioner who, being the wife, was domiciled in India before marriage and has been residing in India for a period of not less than three years preceding the petition, the object being to give relief to Indian women marrying persons with foreign domicile. The scope of the clause has been further enlarged to provide for decrees of nullity being passed in cases where both parties to the marriage are domiciled in India or at least the petitioner is domiciled in India.

Clause 36.—Subject to the restrictions contained in clause 35, this clause seeks to define the district court which will have jurisdiction in respect of petitions under the proposed law. The clause has been so framed as to ensure that the question which district court will exercise jurisdiction is answered for all situations.

Clause 39.—While following the language of the Hindu Marriage Act, 1955, and the Special Marriage Act, 1954, a new provision is included whereby private persons may be associated with the court for the purpose of effecting a reconciliation between the parties.

Clause 40.—This follows section 11 of the Indian Divorce Act, 1869, with the addition of the words "or adulteress" to cover cases

where the wife sues the husband for divorce on the ground of adultery. The court is also being given a discretion to excuse non-compliance with this clause on any other ground as in the U.K. Act. The scope of the provision has been extended to cover petitions for judicial separation where the ground is adultery.

Clause 42.—This clause provides for a *decree nisi* to be pronounced in the first instance, to be followed by a decree absolute. It is also provided that where the petitioner (decree-holder) does not apply within six months to get the decree made absolute, it is open to the respondent to move the court in that behalf within a specified period.

Clause 43.—While following the corresponding provisions in the Indian Divorce Act, 1869, the following changes have been made:—

(1) The right to claim damages has been given to the wife also,

(2) the provision for a mere claim for damage apart from divorce has been omitted as being repugnant to modern ideas.

Clauses 44 to 50.—These to a large extent follow the corresponding provisions in the Special Marriage Act, 1954, and the Hindu Marriage Act, 1955. Wherever necessary, the language has been slightly modified in order to make the provision simpler or to get over a few minor difficulties in construction which had been experienced in the working of the two Acts, as, for example, in clause 49.

Clause 51.—Although the Indian Penal Code punishes the offence of bigamy, this clause is being included in order to make it clear that a person married under this Act who contracts a second marriage under any other system of law would be equally guilty of the offence of bigamy. It follows section 44 of the Special Marriage Act, 1954.

Clause 52 provides for penalties in respect of the contravention of any of the other conditions laid down for a Christian marriage, and follows section 18 of the Hindu Marriage Act, 1955.

Clauses 53 to 60.—The penalties provided in the existing Act are rationalised and brought together in a convenient form. Many of these provisions are modelled on the corresponding provisions in the Hindu Marriage Act, 1955, and the Special Marriage Act, 1954.

Clauses 61 to 63.—Reproduce the corresponding provisions in the Christian Marriage Act, 1872, with suitable modifications.

Clause 64 is new. It appears that, in practice, marriages are solemnized at places other than churches. Therefore, this practice

is sought to be given statutory recognition, provided it is sanctioned by custom or usage prevalent in the community.

Clause 67 provides for the free inspection of the Marriage Certificate Book and for the free supply of certified extracts therefrom if such inspection or supply is asked for by the parties to the marriage at or about the time of the marriage. This provision will also apply in relation to ministers of churches.

Clause 70 is intended to protect ministers of churches in cases where by the rules of the church they are prohibited from solemnizing a particular marriage.

Clause 74.—Since the grounds which render a marriage void under the new law are not co-extensive with those given in section 19 of the Indian Divorce Act, 1869, it is necessary to ensure that a marriage performed before this new law comes into force is not rendered void by the new provision. Hence this clause.

Clause 75 repeals all existing laws, whether passed by any legislature in India or by the U.K. legislature in their application to India, and contains the necessary saving provisions. By reason of section 17 of the Indian Independence Act, 1947, the two British Acts have already ceased to apply to India for all practical purposes.

The First Schedule.—The list of prohibited relationships has been framed on the basis of the English Marriage Act, 1949 and the Special Marriage Act, 1954; but certain items like sister's son, sister's daughter, brother's son, brother's daughter, etc., have been omitted, as in some communities such marriages are said to be common and have in fact been allowed to be solemnized by papal dispensation:

FINANCIAL MEMORANDUM

Clause 9 of the Bill relates to the appointment of Marriage Registrars by the State Government which, in respect of the Union Territories, would be the Central Government. Ordinarily, existing Government officers will be appointed as Marriage Registrars and this has been the practice under the Indian Christian Marriage Act, 1872, which the present Bill seeks to replace. However, the possibility of a new officer being appointed exclusively for the purpose, in exceptional circumstances, cannot be ruled out and in that contingency some expenditure may be involved from the Consolidated Fund of India. The expenditure is of a remote and contingent character and therefore it is not possible to give any indication thereof at this stage.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 72 of the Bill empowers the Central Government to make rules for carrying out the purposes of the Act. The matters in respect of which such rules may be made relate, *inter alia*, to the duties and powers of Marriage Registrars, their territorial jurisdiction, the manner in which they may hold enquiries and the procedure to be followed in such enquiries, the fees for the performance of various duties under the Act, the conditions under which licences to solemnise marriages may be issued by the State Government, the surrender of such licences and other matters of procedure, form or detail, and as such the delegation of legislative power is of a normal character.

M. N. KAUL,
Secretary.

